Office - Supreme Court, U.S.
FILED
MAY 22 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 1018 1132

STANLEY G. BANDEEN, - - - - - - Petitioner,

versus

E. M. HOWARD, J. WATTS STOVALL, BRUCE UNDERWOOD, GEORGE S. COON, THOMAS P. LEONARD, W. H. FULLER, CARL J. JOHNSON, R. W. ROBERTSON, CLARENCE DAVIS, Individually and Collectively as Constituting the STATE BOARD OF HEALTH OF KENTUCKY, and

JAMES F. QUEENAN, Clerk of the Jefferson County Court, - - - - - - - - - Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

BLAKEY HELM,
510 Marion E. Taylor Bldg.,
Louisville, Kentucky,
Counsel for Petitioner.

Dated: May 20, 1957.

INDEX.

	PAGE
Opinions of State Courts	2
Jurisdiction	3
Questions Presented	3
Constitutional and Statutory Provisions Involved	4
Statement of the Case	5
Reasons for Granting the Writ	13
1. No Jurisdiction to Hold Proceedings Before State Board of Health	14
2. Petitioner Did Not Have a Fair and Impartial Hearing	20
3. State Board Order Was Never in Effect and Was Void	24
Conclusion	29

TABLE OF CASES AND TEXTS CITED.

	PAGE
Kendall v. Beiling, 295 Ky. 782, 175 S. W. 2d 489	2
Bandeen v. Howard, et al., Ky., 299 S. W. 2d 249	3
Matthews, et al. v. Murphy, 63 S. W. 785, 23 K. L. R. 750, 64 L. R. A. 415	13, 14, 15
Forman v. State Board of Health of Kentucky, 157 Ky. 123, 162 S. W. 796	14, 23, 28
Bregel v. City of Newport, 208 Ky. 581, 271 S. W. 665	15
Walker v. Commonwealth, 8 Bush (71 Ky.) 86	16
Louisville and Jefferson County Planning and Zoning Commission v. Ogden, 307 Ky. 362, 210 S. W. 2d 771	16

PAGE

Pond Creek Pocahontas Co. v. Breathitt County, Ky., 290 S. W. 2d 34 16

State of Kansas v. Occidental Life Ins. Co., 95 F. 2d 935 (C. A. 10th) 18

Bratton, et al. v. Chandler, 260 U. S. 110, 67 L. Ed. 157, 43 S. Ct. 43 19

Smith v. Department of Registration, etc., 412 Ill. 332, 106 N. E. 2d 722 21

Int. Comm. Commission v. L. & N. R. R. Co., 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431 23

I. C. R. R. Co. v. R. R. Comm. of Kentucky, 1 F. 2d 805. 23

U. S. v. Abilene & Southern Ry., 265 U. S. 274, 44 S. Ct. 565, 68 L. Ed. 1016 23

Ohio Bell Telephone Co. v. Pub. Util. Comm., 301 U. S. 292, 57 S. Ct. 724, 81 L. Ed. 1093 23

Davis on Administrative Law 23

50 American Jurisprudence 536—"Statutes" 536 25

Treacy v. E. L. & B. S. R. Co., 85 Ky. 270, 3 S. W. 168 .. 26

W. U. Tel. Co. v. L. & N. R. R. Co., 258 U. S. 13, 66 L. Ed. 437 26

L. H. & St. L. Ry. Co. v. Lyons, 155 Ky. 396, 159 S. W. 971 28

Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446 28

Opp. Cotton Mills v. Administrator, 312 U. S. 126, 61 S. Ct. 524, 85 L. Ed. 624 29

U. S. v. Carolina Freight Carriers, 315 U. S. 475, 62 S. Ct. 722, 86 L. Ed. 971 29

S. E. C. v. Chenery Corp., 318 U. S. 80, 63 S. Ct. 454, 87 L. Ed. 626 29

INDEX TO APPENDICES.

		PAGE
A.	**Pertinent Statutes**	31
A–1	Kentucky Revised Statutes (1948 Ed.), Section 311.110	31
A–2	Kentucky Revised Statutes (1948 Ed.), Section 311.120	31
A–3	Kentucky Medical and Osteopathic Practice Act of 1952, Section 15 (now Kentucky Revised Statutes (1955 Ed.), Section 311.615(1))	32
A–4	Kentucky Medical and Osteopathic Practice Act of 1952, Section 18, Kentucky Acts 1952, Chapter 150, Section 18 (p. 409)	32
A–5	Kentucky Medical and Osteopathic Practice Act of 1952, Section 6(7) (now Kentucky Revised Statutes (1955 Ed.), Section 311.570(7))	33
B.	**State Board of Health Proceedings**	33
B–1	Show Cause letter dated April 17, 1950	33
B–2	Special Demurrer	34
B–3	Motion for copy of the Complaint	35
B–4	Show Cause letter of August 4, 1950, with Copy of Complaint	35
B–5	General Demurrer	38
B–6	Answer	38
B–7	Findings and Order of State Board of Health	39
B–8	Appeal to Governor	42

PAGE

C. Court Proceedings 47

C–1 Petition in Equity 48

C–2 Answer of State Board 56

C–3 Reply 67

C–4 Opinion of Chancellor 70

C–5 Judgment of Franklin Circuit Court 71

C–6 Opinion of Kentucky Court of Appeals 72

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. _____.

STANLEY G. BANDEEN, - - - - - *Petitioner,*

v.

E. M. HOWARD, J. WATTS STOVALL, BRUCE UNDERWOOD, GEORGE S. COON, THOMAS P. LEONARD, W. H. FULLER, CARL J. JOHNSON, R. W. ROBERTSON, CLARENCE DAVIS, Individually and Collectively as Constituting the STATE BOARD OF HEALTH OF KENTUCKY, and

JAMES F. QUEENAN, Clerk of the Jefferson County Court, - - - - - *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

Your petitioner, Stanley G. Bandeen, respectfully prays that a writ of certiorari issue to review a judgment of the Kentucky Court of Appeals (highest State court), entered October 5, 1956, which became final February 22, 1957. This judgment recognizes as valid an Order which revokes petitioner's license to practice osteopathy in Kentucky.

OPINIONS OF THE STATE COURTS.

The basis for this action was a proceeding before the State Board of Health of Kentucky to revoke petitioner's osteopathic license. The decision in that proceeding was rendered December 13, 1951, in a document entitled "Findings and Order of State Board of Health". This Order is not officially reported, but a copy is included herewith as Appendix B-7. This Order was to become effective at a designated time unless appealed to the Governor. The statute (Appendix A-2) authorized the Governor, on appeal, to affirm or overrule.

Petitioner believed that the Order was void on several grounds, and appealed to the Governor. The Governor failed to make any decision while the Act authorizing such appeal was in effect.

The State Board later sought to enforce the suspended Order. The statute under which the Order was made did not authorize a Court appeal. When court appeals from administrative boards are not provided, Kentucky practice recognizes the remedy in proper cases of injunctive relief. *Kendall* v. *Beiling*, 295 Ky. 782, 175 S. W. 2d 489.

This injunction suit was then filed in the Franklin Circuit Court. The Chancellor denied an injunction in a very short opinion (Appendix B-5). A copy of that Court's judgment is filed as Appendix B-4. This judgment was appealed to the Kentucky Court of Appeals, and was affirmed there. That Court's opinion

is officially reported now as Bandeen v. Howard, *et al.*, Ky., 299 S. W. 2d 249. This opinion is included herewith as Appendix C-6.

JURISDICTION.

The opinion and judgment of the Court of Appeals of Kentucky were entered October 5, 1956. A petition for rehearing filed in that Court was overruled February 22, 1957, so the judgment became final then.

The jurisdiction of this Court rests upon 28 U. S. C., Section 1257(3).

QUESTIONS PRESENTED.

Dr. Stanley G. Bandeen received from the State Board of Health of Kentucky an order to appear before the Board at a designated time to show cause why his license to practice osteopathy should not be revoked. As the statute authorized revocation proceedings only on complaint, petitioner sought compliance with the statute, but never was furnished a complaint.

Nevertheless, he was notified to appear for a hearing on September 7, 1950, and did. The proceedings resulted in an order entered fifteen months later revoking his license to practice, but suspending the order in case of appeal to the Governor. The statute gave the right of appeal to the Governor (Appendix A-2). Petitioner filed an appeal, which was pending when the law was repealed.

Petitioner believes that State Board Order was void, and that it never legally became effective. The questions which are presented by this petition are:

1. Did the State Board of Health of Kentucky have jurisdiction to hear proceedings to revoke the license of Dr. Stanley G. Bandeen to practice osteopathy which had been granted to him by it, without complying with the Statute by furnishing him copy of any complaint?
2. Can the State Board of Health of Kentucky admittedly consider as evidence, and base its decision at least in part upon, facts not in evidence?
3. Is an Order of the State Board of Health of Kentucky revoking a license to practice osteopathy, never affirmed by the Governor while law in effect, and made without finding any specific facts as basis for such an order, valid and enforceable?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The statutes in Kentucky involved in this action are mainly the Medical Practice Act in effect in 1950, 1951 and 1952. The pertinent provisions are:

Procedure in Revocation Proceedings—Section 311.120, Kentucky Revised Statutes (1948 Ed.) —(Appendix A-2):

Grounds for Suspension or Revocation—Section 311.110, Kentucky Revised Statutes (1948 Ed.) —(Appendix A-1):

Express Repeal of these Sections—Kentucky Acts 1952, Chapter 150, Section 18—(Appendix A-4).

The constitutional provisions are the Fifth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE.

In Kentucky the admission to practice and supervision of practice of osteopathy are placed in the State Board of Health. This Board is composed of 5 allopathic physicians, 1 osteopathic, 1 hemeopathic, 1 eclectic physician and 1 pharmacist. Dr. Stanley G. Bandeen was admitted to practice osteopathy in Kentucky in 1926, and has practiced in Kentucky ever since.

Prior to admission he had graduated in pre-medical work at the University of Wisconsin, in Veterinary Medicine at Michigan State College and in osteopathy at the American School of Osteopathy at Kirksville, Missouri. He had taught in this last institution. He said he also had a medical degree, but its nature was not discussed in evidence because that was not in issue before the State Board. Dr. Bandeen is a member, on invitation of several scientific societies.

He had been licensed to practice osteopathy in Missouri in 1924 and was admitted in Kentucky in 1926 through reciprocity. In 1933 Dr. Bandeen and all other doctors admitted through reciprocity were required to take examinations. The same examination was given to osteopaths and allopathic doctors. Dr.

Bandeen passed the examination and was given an unlimited license to practice medicine in Kentucky.

Dr. Bandeen has practiced osteopathy in Louisville ever since. He is now 64 years of age. He was at one time listed under the telephone column "Physicians and Surgeons (M.D.)". He testified that he had the required education for allopathic medicine, but did not desire to practice that branch even if he had received an unlimited license.

The license revocation proceedings started in April, 1950. Dr. Bandeen received a show-cause letter for revocation of his license (Appendix B-1). This letter gave him no information as to any complaint, as to any patient, as to any particular conduct. Since the Statute provided that the license holder must be furnished with a complaint, he tried hard to get a copy. Four months later he received another show-cause letter with an unsigned paper marked "Copy of Complaint".

A hearing was held on September 7, 1950, with evidence as to two patients not living and as to one who had been dissuaded from returning to see him. In this hearing the testimony showed that Dr. Bandeen sometimes used an oxidizing medicine known as the Koch Treatment. He said the use of this medicine included previous heart examination, blood examination, physical check-up, X-rays when necessary, purchase of medicine and care for some weeks thereafter, all for one lump charge.

Dr. Bandeen said this medicine is not given to cure a disease, but to restore the body to normal condition so it can throw off disease. Dr. Underwood, the Board Secretary, said as to this medicine: "We don't say it is no good. We say there is some question as to the value of it." Dr. Bandeen said that the American Medical Association does not recommend it.

The State Board refused to go into the merits of this medicine. The hearing was on September 7, 1950. About the end of November, 1951, counsel for the State Board filed a reply brief with an opinion of the Federal Trade Commission as an appendix. On December 13, 1951, the State Board entered an Order revoking Dr. Bandeen's license to practice osteopathy or any healing art.

The Statute gave a right to appeal to the Governor, who could affirm or overrule the decision (Appendix A-2). The Statute was expressly repealed effective June 19, 1952 (Appendix A-4). The Governor had not acted on the appeal, and the new Act had entirely new procedure.

The Order of December 13, 1951, was never affirmed while the Act was in effect, so this revocation proceeding remained unfinished. Nevertheless, the State Board attempted to enforce the Order. So this injunction suit was filed. The petition in equity (Appendix C-1) included as grounds for relief:

1. The State Board of Health had no jurisdiction to hear the proceeding;

2. The State Board denied petitioner a fair and impartial hearing;
3. The State Board's Order never became effective, and was void because the State Board made no findings of facts.

That petition claims that all these grounds violated petitioner's rights under the due process clause of the Fifth Amendment to the United States Constitution (Appendix C-1, p. 47). The petition claims that the third ground violates petitioner's rights under the Fourteenth Amendment to this Constitution by depriving petitioner of property without due process of law, and denying him equal protection of the laws. These same constitutional points had been raised in the Appeal to the Governor (Appendix B-8).

Respondents filed an answer admitting that their decision was based partly on findings in the Federal Trade Commission opinion. This Commission opinion was rendered just 3 days less than a year after the only hearing by the State Board. This opinion will be discussed later, but it certainly was not introduced in evidence.

The Answer stated also that the State Board's opinion was based on petitioner prescribing and administering the Koch Cancer Treatment and on petitioner falsely representing that he was licensed to practice medicine, and other acts.

The charge sheet which was fictitiously labelled "Copy of Complaint" had not mentioned any telephone listing. Evidence as to it was admitted over objection.

Certainly that issue was not before the State Board. The unsigned Copy of Complaint had listed in specific charges "The use of medicine of doubtful value". But the point was hardly mentioned in evidence.

The Chancellor considered the case for about eight months, then denied the injunction, in just a few words. The judgment was promptly appealed. The Kentucky Court of Appeals had it under submission almost two and a half years.

The opinion of that Court affirmed the Chancellor's judgment. The Court disposed of the first point by saying that a complaint was filed by the State Board. The opinion says (p. 251) (Appendix C-6, p. 72):

> "Bandeen's challenge to the jurisdiction of the Board is bottomed upon the contention that it initiated the instant proceeding against him in its name, whereas it is maintained the correct mode of preferring charges against him was by the verified complaint of some individual. This position is untenable. There was nothing in the applicable statutes in effect in 1950 which prohibited the Board from instituting a revocation proceeding upon the basis of information received by it or by any member thereof. It is well established that in the absence of express statutory restraints an administrative agency may inaugurate investigations and hearings of the character under discussion on its own motion. This is one of the distinctive functions of such agencies which sets them apart from the courts. See 42 Am. Jur., Public Administrative Law, Sec. 31, p. 323; Federal Communications Commission v. Pottsville

Broadcasting Co., 309 U. S. 134, 608 S. Ct. 437, 84 L. Ed. 656, 662."

The Opinion disposes of the second point as to not having a fair and impartial trial by holding the evidence to be immaterial or to be a finding of law, rather than of fact. The Opinions says (p. 254) (Appendix C-6, p. 72):

"It is true the secretary of the Board did much of the questioning of Bandeen, but this was not improper under the circumstances. Also, during the hearing, the secretary was permitted to give general information surrounding the complaints against Bandeen over the years. Bandeen argues this was prejudicial and denied him a fair hearing. It is patent the secretary's statements were pure hearsay and not competent for any purpose. However, Bandeen was given ample opportunity to introduce rebuttal evidence. Proceedings before administrative boards are informal and a wide latitude is allowed in taking proof and the technical rules of procedure are not ordinarily enforced. See Goodrich v. Selligman, 298 Ky. 863, 183 S. W. 2d 625. The secretary abstained from voting to revoke Bandeen's license. Furthermore, there was ample evidence other than that contained in the report of the secretary to sustain the Board's order. As to Bandeen's theory that he was dealt a wrong because the Board relied upon the Federal Trade Commission opinion in arriving at the conclusion it reached, our answer to that is the opinion was a finding of law, and not one of fact, hence the Board could take judicial notice of it. Especially is this true since the Federal Trade

> Commission opinion was later affirmed by the United States Court of Appeals for the Sixth Circuit."

The Opinion disposes of the third point by holding that the jurisdiction of the Board was not disturbed, and the appellate jurisdiction was transferred to the Jefferson Circuit Court. As to the Board having no authority to revoke a license without finding the necessary facts, the Kentucky Court of Appeals says only that the Statute does not require this to be done, and such findings are not required for due process of law (p. 253). The Opinion says (Appendix C-6, p. 72):

> "It is next argued the order was a nullity because it did not set out any findings of fact. The statute under which the proceeding was instituted and conducted did not require that such be done. Written special findings by administrative agencies are not necessary in order to meet due process of law requisites. See Davis on Administrative Law (1951 Ed.), pp. 524 and 526."

This means that the Kentucky Court of Appeals in effect held that despite the flaunting of the statutory provisions as to procedure, this did not violate petitioner's constitutional rights as to jurisdiction. We believe that this position is not in accord with applicable decisions of this Court.

The holding that facts considered by the State Board and by the Kentucky Court of Appeals, which were not in evidence, can be considered as findings of law, is certainly contrary to applicable decisions of this Court.

The Kentucky Court of Appeals directly decides the constitutional point as to findings being required to make an Order based on such findings. We believe that that holding is also not in accord with applicable decisions of this Court.

The Petition for Rehearing in the Kentucky Court of Appeals insisted that these points, which were being urged there, and are the basis of this petition, involve constitutional guaranties.

The Kentucky Court of Appeals also made mistakes as to the evidence, which might help account for its decision. Dr. Bandeen did not testify that he had no right to use the professional title of Doctor of Medicine, or that he was not entitled to engage in the general practice of medicine. That was not an issue before the State Board, but a member of the State Board eliminated that question anyhow. Dr. Carl J. Johnson responded to the Secretary of the Board as follows:

> "Dr. Johnson: No, he has an unlimited license, but it makes no difference in the State of Kentucky whether he graduated from the osteopathic school, it makes no difference; you have the same requirements. You have to go through the same college training, and you have to take the same examination, and you get the same license, and since 1936—I think it was '35 this resolution was passed —Dr. Bandeen previous to that had not taken the examination in the practice of medicine. Then he took the examination for the practice of medicine and was given an unlimited license."

That Court accepted controverted statements of a Mr. Rucker as to his wife, who had been a patient several years before. This patient had other doctors attend her. To give the medical opinions he gave, at least one of the doctors should have been called.

The only patient who testified said Dr. Bandeen quoted $150 for a hemorrhoid operation. The Opinion says she paid this. The witness says she paid nothing; she did not return for treatment. The Court of Appeals finds facts to uphold the Order, but those facts were not in issue or in evidence, and no statute gave any Court the right to revoke licenses. The telephone listing for a short time was not on the charge sheet. The facts claimed now as to the Koch Treatment were never in evidence. There was no point raised as to an opportunity to produce counter-evidence. Petitioner did not know that was used as a basis for the State Board's Opinion until the Board's Answer obligingly so stated. He has insisted that evidence not introduced at the hearing had no place in this proceeding.

REASONS FOR GRANTING THE WRIT.

The Order of the State Board of Health would take from petitioner the right to use his professional education and the opportunity to earn a living. The effect of such an order is expressed very appropriately in a case holding a previous Medical Practice Act in Kentucky to be unconstitutional. This was the case of *Matthews, et al.* v. *Murphy*, 63 S. W. 785, 23 K. L. R.

750, 54 L. R. A. 415, where that Court said (63 S. W. 786):

> "The effect of such action of the board would cause the appellee to lose a large sum of money which he has spent for his professional education, and bar him from the acquisition of a livelihood thereby, and at the same time mar his character in such a way that it would take years, if he could do so at all, to remove it."

Since the action of the Board has been so drastic, it is essential that the State Board have had jurisdiction, have conducted its *quasi*-judicial proceedings in a fair and impartial manner, and have taken action only in a legal and constitutional manner. Petitioner insists that his rights under the United States Constitution have been violated in all three ways.

1. NO JURISDICTION TO HOLD PROCEEDING.

Did the State Board of Health of Kentucky have jurisdiction to hear proceedings to revoke the license of Dr. Stanley G. Bandeen to practice osteopathy which had been granted to him by it, without complying with the Statute by furnishing copy of any complaint?

The Medical Practice Act of 1904 (still in effect in 1950) was enacted after the 1893 Act had been held unconstitutional in the *Murphy* case just cited. In a case attacking the 1904 Act, *Forman* v. *State Board of Health of Kentucky*, 157 Ky. 123, 162 S. W. 796, the Kentucky Court of Appeals said (157 Ky. 129):

"The proceeding is not judicial; it is purely administrative. The State may create a board to grant licenses to physicians and may authorize the same board to revoke a license they have granted. Arbitrary power cannot be conferred on the board; it may not act arbitrarily but must act upon reasonable grounds and in compliance with the statute."

In a case involving alleged inefficiency and negligence of a chief of police, *Bregel* v. *City of Newport*, 208 Ky. 581, 271 S. W. 665, the Kentucky Court of Appeals, in holding the complaint insufficient, said (208 Ky. 582-3):

"This charge is not sufficient under the statute. It does not set out with clearness or distinctness any charge. There is a similar statute authorizing a lawyer to be disbarred for neglect or lack of moral character, but it is uniformly held that the specific charges must be made with sufficient distinctness to enable the person charged to know the acts which are charged against him. There is a similar statute in regard to physicians. The original act was held unconstitutional in Matthews v. Murphy, 63 S. W. 785, 23 Ky. Law Rep. 750, 54 L. R. A. 415, for uncertainty, and the amended statute was sustained on the ground that it prescribed a standard, and the prosecution under this statute was sustained when the specific acts charged against the defendant were set out, although it was held in that case that the court would not grant an injunction restraining the board from trying the case. Forman v. State Board of Health, 157 Ky. 123, 162 S. W. 796. The

charge here did not inform the defendant as to the specific things he had done or omitted to do in violation of his duty."

The provision of the Kentucky Statutes as to instituting revocation proceedings before the State Board of Health (Section 311.120(1)) is perfectly clear. It says:

> "In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing."

This provision is certainly understandable. Complaints were filed and copies furnished in the *Murphy* case, the *Forman* case and the *Bregel* case cited *supra*. In the case of *Walker* v. *Commonwealth*, 8 Bush (71 Ky.) 86, involving disbarment of a lawyer, the Kentucky Court of Appeals said (p. 96):

> "Now where the party is charged with malpractice without the presence of the Court, the correct mode of proceedings against him is by complaint or information on the oath of some individual."

The Kentucky Court of Appeals has recognized that strict compliance with statutory procedure by an administrative board is absolutely necessary for jurisdiction.

Louisville and Jefferson County Planning and Zoning Commission v. *Ogden*, 307 Ky. 362, 210 S. W. 2d 771;

Pond Creek Pocahontas Co. v. *Breathitt County*, Ky., 290 S. W. 2d 34.

It certainly seems to have been intended that some person, other than a member of the tribunal to hear a complaint, should file same. Regardless of who filed the complaint, compliance with this Statute can only be had by the licensee being "furnished with a copy of the complaint".

The proceeding against petitioner was started with a show-cause letter. Petitioner's special demurrer to this form of notice was overruled, but the State Board did sustain petitioner's motion for a copy of the complaint. He never got it, however. Four months later he got another show-cause letter with scattered or "shot-gun" charges on an unsigned paper entitled "Copy of Complaint".

The State Board attempted to substitute a charge sheet for a complaint. Petitioner again filed a special demurrer, which was overruled, then a general demurrer, which was overruled. He filed an Answer. The Board then filed with the Board a Reply to the Answer. The trial proceeded.

Without any complaint presented in advance or even before questioning witnesses, the Secretary of the Board brought on some evidence as to the three patients, and the Board's counsel announced that this closed the hearing except for the Secretary's testimony. As to each of these three patients, the testimony of the witnesses was taken first, but after the testimony the Board's counsel presented and filed in evidence signed statements making complaint against Dr. Bandeen. These were complaints which the State Board has sent out its employees to solicit. The statements were kept

secretly in the Board's files, and no copies furnished until they were introduced in evidence. The Board was evidently embarrassed at finding no patient of Dr. Bandeen's who would file a complaint.

In this case there was not only a failure to comply with the Statute as to jurisdiction, but a wilful flaunting of the statutory requirements. It is hard to understand how the Kentucky Court of Appeals could overlook these jurisdictional facts.

Such disregard of petitioner's rights is certainly in violation of the due process clause of the Fifth Amendment, as well as denying petitioner equal protection of the laws. Existence of such flagrant acts should require this case to be considered and reversed by this Court.

In *State of Kansas* v. *Occidental Life Ins. Co.*, 95 F. 2d 935 (C.A. 10th), a question of "due process" was considered. The Opinion says (p. 937):

> "The remaining contention advanced is that the contract of reinsurance and the decree approving it do not authorize the withdrawal of the deposited securities, and that the order requiring their withdrawal and delivery violates due process clause in the Fifth Amendment to the Constitution of the United States. The basic requisites of due process when applied to judicial proceedings are that, having due regard to the form and nature of the proceeding and the character of the rights which may be affected, the order, judgment, or decree be entered by a court clothed with jurisdiction of the subject matter and that the party or parties bound by it have notice and be afforded an opportunity to present every available defense."

A petition for certiorari to that Opinion was denied by this Court. 305 U. S. 603, 59 S. Ct. 63, 83 L. Ed. 383.

The same principles are recognized by this Court as applicable to a State Real Estate Commission, the Opinion condemning the Commission withholding data. *Bratton, et al.* v. *Chandler*, 260 U. S. 110, 67 L. Ed. 157, 43 S. Ct. 43.

In that case a District Court with three judges had held a state Act providing for issual of real estate licenses, unconstitutional because the Board could procure other secret evidence. This Court reversed the case, holding that the Act did not intend secrecy in license hearings. Then this Court said that with the Act so construed, it "will leave no power with it (the Commission) that it can exercise to the detriment of any right assured to an applicant for a license by the Constitution of the United States."

That decision certainly condemns the actions of the State Board of Health in procuring and secreting the complaints solicted from the various individuals who appeared as witnesses against the Petitioner. The principle announced in the Chandler case means that the State Board of Health in this case had not complied with the Medical Practice Act as to the action to acquire jurisdiction for the holding of revocation proceedings against petitioner. It had no jurisdiction here.

2. FAIR AND IMPARTIAL HEARING.

Can the State Board of Health of Kentucky admittedly consider as evidence, and base its decision at least in part upon, facts not in evidence?

Sending to Dr. Bandeen show-cause letters indicated an attitude of pre-judging. Even the unsigned charge sheet entitled "Copy of Complaint" was an evasion and the filing by the Board of a Reply to a petitioner's Answer further aligned the Board against petitioner in advance. In fact, the Board's Secretary took such an antagonistic attitude toward Dr. Bandeen in advance, that objection was made to his participating as a member of the Board. This was emphatically overruled.

This Secretary, Doctor Underwood, insisted on his right to sit as a member of the Board. In fact, once speaking for the Board, Dr. Underwood said:

> "Now we are not trying any of the specific charges. We are trying the general charge of grossly unprofessional and dishonorable conduct with the two features that are in it, deception and defrauding of the public."

Dr. Underwood even stated early in the hearing: "At the end of that time I will introduce a statement, not attempting to prove it * * *". The Board did permit Dr. Underwood to introduce a four page hearsay memo.

The testimony as to petitioner treating two of his patients was as to use of a Koch treatment. This is an

oxygenizing medicine used sometimes in cancer cases. Dr. Bandeen testified that he gave it if so requested by the patient. The only adverse testimony as to it was Dr. Underwood's statement that: "We say there is some question as to the value of it". Dr. Bandeen was asked if the American Medical Association had considered it, and he said that Association does not recommend it.

Then petitioner's counsel offered to go into the merits of this medicine, but the Board refused to permit this. That was natural, as the question is most controversial. We had supposed that ruling eliminated that issue.

There was no medical testimony against the use of the medicine. *Smith* v. *Department of Registration, etc.*, 412 Ill. 332, 106 N. E. 2d 722, was a case involving use of this medicine, with no medical testimony. In holding void the proceeding against Dr. Smith, the Illinois Supreme Court said (106 N. E. 2d 730):

> "As we have indicated heretofore, the revocation of a professional license involves serious consequences, both to the licensee under attack and to the public. The charges must be specific and the proof clear and convincing. If Dr. Smith is dishonest in his practice and if the 'Koch Treatment' is without value, it was a simple matter for the Department to have produced such proof. This court possesses neither medical learning nor powers of telepathy."

Instead of dropping this issue, counsel for the State Board filed a Reply Brief about November 30, 1951

(nearly 15 months later), with a copy of an Opinion in a case before the Federal Trade Commission. Had the Board re-opened this proceeding for more evidence then petitioner would certainly have objected and believes that this Opinion would have been held inadmissible as proof of any facts.

The State Board did not re-open this proceeding. The Opinion was not offered in evidence. When this injunction suit was filed, the State Board sought to justify its Order, in which no facts had been found. Its Answer (Appendix C-2) says in Paragraph Two:

> "Thereafter the Board, on December 13, 1951, after duly considering the Transcript of Record and the Transcript of Proceedings, * * * and also a decision of the Federal Trade Commission * * * finding that the so-called Koch Cancer Treatment has no therapeutic value but has adverse effects on some people, * * *."

The State Board had no evidence presented before it as to the therapeutic value of the Koch Treatment, and chose to treat the Federal Trade Commission's findings as evidence of facts upon which to base its Order. The Board treated this as evidence, and, according to the Board's Answer in this case, "reached the opinion that the Plaintiff had, by prescribing and administering the so-called Koch Cancer Treatment . . . engaged in acts and conduct that were grossly unprofessional and dishonorable . . ."

Whether the Kentucky Court of Appeals considers the recitals in Federal Trade Commission Opinion as

facts or law, the State Board says it based its ruling on these facts.

This demonstrates that this Board of Health did not appreciate the importance of fundamental rights in its duties as a tribunal with semi-judicial functions. Whether or not the evidence affected the decision, the Board had no right to go outside the evidence introduced. This has been specifically held in cases arising in Kentucky.

Int. Comm. Commission v. *L. & N. R. R. Co.*, 227 U. S. 88, 33 S. Ct. 185, 57 L. Ed. 431;

I. C. R. R. Co. v. *R. R. Comm. of Kentucky*, 1 F. 2d 805.

This Court made this same ruling in *U. S.* v. *Abilene & Southern Ry.*, 265 U. S. 274, 44 S. Ct. 565, 68 L. Ed. 1016. This Court has also held void an order of a State Commission for using evidence outside the record. *Ohio Bell Telephone Co.* v. *Pub. Util. Comm.*, 301 U. S. 292, 57 S. Ct. 724, 81 L. Ed. 1093.

Professor Davis in his text on Administrative Law fully supports the principles of the *Ohio Bell* case.

Even the evidence from the Commission opinion related only to the making of claims of certain attributes as to the Koch medicine. That Commission did not attempt to stop the use of such medicine. It can be used by doctors who believe it proper in the particular case. The *Forman* case, cited *supra*, says that if the doctor was sincere in his treatments, his license may not be revoked.

3. STATE BOARD ORDER—NEVER IN EFFECT AND VOID.

Is an Order of the State Board of Health of Kentucky revoking a license to practice osteopathy, never affirmed by the Governor while law in effect, and made without finding any specific facts as basis for such an order, valid and enforceable?

The Order rendered by the State Board of Health of Kentucky on December 13, 1951, reads in part as follows (Appendix B-7, p. 39):

> "this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120(3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended pending decision by said Governor upon said appeal."

The procedure in the statute as to revocation proceedings (Appendix A-2) gave the right of appeal to the Governor who could affirm or overrule the Board's Order. Until the Governor had acted, no action in the revocation proceedings was final. In this case the Governor failed to make any decision before June 19, 1952.

At that time provisions previously controlling such proceedings were expressly repealed (Appendix A-4), with no saving clause as to pending revocation proceedings. Presumably the new Act, promoted by the State Board, has modernized the Medical Practice Act. Any

new revocation proceedings must be pursuant to the new Act.

At the time the repeal took effect on June 19, 1952, the Board's Order of December 13, 1952, was not in effect. This was an unfinished case, not affirmed. The new Act provides that all licenses heretofore issued by the Board are declared to be valid, "unless they have become expired, cancelled, suspended or revoked in accordance with law" (K. R. S. Section 311.615(1) (1953 Ed.) Appendix A-3). Since the Governor had never affirmed the Board's Order, this declared Dr. Bandeen's license valid. The new Act provided that no license should thereafter be revoked except in accordance with entirely new procedure (K. R. S. Section 311.570(7) Appendix A-5).

The general rule applicable to pending proceedings in case of repeal of a statute is stated in 50 American Jurisprudence 536, under "Statutes" Section 530, as follows:

> "Under the common law, it has been held that, if a statute is unconditionally repealed without a saving clause in favor of pending suits, all pending proceedings thereunder are terminated, and if final relief has not been granted before the repeal goes into effect, it may not be afterwards. This is true of the repeal of a law relating to procedure or of a law conferring jurisdiction in which case the right to proceed further in an action that is pending but undetermined at the time of the repeal is taken away."

This rule applies in Kentucky.

Treacy v. *E. L. & B. S. R. Co.*, 85 Ky. 270, 3 S. W. 168;

W. U. Tel. Co. v. *L. & N. R. R. Co.*, 258 U. S. 13, 66 L. Ed. 437.

The Western Union case cited above involved repeal of a condemnation statute after a condemnation judgment had been reversed. This Court's Opinion says in part (258 U. S. 19):

> "It takes away the power to condemn the right of way of a railroad company by telegraph companies, and it does not save proceedings commenced before its applicable date. Such reservation is usual, if intended."

This Court's Opinion discusses the *Treacy* case cited *supra* and says as to it (258 U. S. 20):

> "and the proceedings being thus *in fieri*, the law under which they were instituted could be repealed, and, if repealed, the subsequent proceedings must be under the new law."

That fits the present unfinished proceedings, where the substantive provisions were continued. Procedure must be controlled entirely by the new law.

The mere fact that the new Act includes the same substantive provisions and more, does not affect the result as to the procedural provisions being completely changed. The Kentucky Court of Appeals really dodged the issue by saying that "it would seem" that

as to an unfinished proceeding the petitioner should have adopted the final stages of the new procedure when the laws says that all stages must be under the new procedure. The Court really attempts to give life to an unfinished, unaffirmed Order.

As indicated, the Order never became effective. Petitioner's position is, however, that if it had, the Order was void because the State Board had not performed its *quasi*-judicial functions.

The Opinion points out that the Statute does not specifically require that the Board recite its findings. The Opinion of the Kentucky Court of Appeals cites Davis on Administrative Law as saying this is not necessary. We understand Professor Davis to say that this is necessary. His text says (p. 527):

> "Both legislatures and courts have seen fit to impose the requirement, the courts sometimes interpreting or purporting to interpret statutory provisions and sometimes creating common law. The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative consideration, helping parties plan their cases for rehearings and judicial review, and keeping agencies within their jurisdiction.
>
> "Much the most prominent reason discussed in judicial opinions is the facilitation of judicial review."

In Kentucky the Court of Appeals held void one Medical Practice Act because the Act gave no standards for the State Board to use. *Matthews* v. *Murphy*, 63 S. W. 785, 23 K. L. R. 750, 54 L. R. A. 415. The

next Act was upheld despite an indefinite provision as to other grossly unprofessional or dishonorable conduct. The Court said it could be upheld only by limiting this provision to conduct of like character with specific grounds named. *Forman* v. *State Board of Health*, 157 Ky. 123, 162 S. W. 796.

The effect of the holding by the Kentucky Court of Appeals in this case is really to leave to the State Board entirely a legal construction as to what facts constitute violations of the Act in effect in 1950. We think the medical profession in Kentucky deserves to have this interpretation of the Kentucky laws reversed, so that the Courts and the public can know as well as the members of the State Board whether or not a doctor has violated a statute.

The Kentucky Court of Appeals has held that the duties of administrative agencies are to find the existence of certain facts, and then to these findings of fact the law is applied. *L. H. & St. L. Ry. Co.* v. *Lyons*, 155 Ky. 396, 159 S. W. 971. That is exactly the principle announced by this Court in setting aside the Order entered in the noted Hot Oil case, *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446.

Professor Davis may think that practical reasons for required findings are more important than constitutional reasons, but this Court has continued to recognize that requirement, as announced in the *Panama Refining* case. We find the following cases since the *Panama Refining* case still recognize the fact that without such findings the administrative agency has

not complied with the constitutional requirements in making Orders based upon such findings.

Opp. Cotton Mills v. Administrator, 312 U. S. 126, 61 S. Ct. 524, 85 L. Ed. 624;

U. S. v. Carolina Freight Carriers, 315 U. S. 475, 62 S. Ct. 722, 86 L. Ed. 971;

S. E. C. v. Chenery Corp., 318 U. S. 80, 63 S. Ct. 454, 87 L. Ed. 626.

The statement in the Kentucky Court's Opinion as to findings not being a constitutional requirement is directly in conflict with these decisions from this Court.

CONCLUSION.

The State Board of Health of Kentucky has not only failed to comply with the Act as to jurisdiction for revocation proceedings, but has flaunted the requirements. It has considered facts not in evidence, and admitted such fact in its Answer in this case, saying that these facts were part of the basis for its decision.

On both these grounds and on account of failing to make the necessary findings of fact, it is respectfully requested that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

BLAKEY HELM,
510 Marion E. Taylor Bldg.,
Louisville 2, Kentucky,
Counsel for Petitioner.

Dated: May 20, 1957.

APPENDIX A-1.

Kentucky Revised Statutes (1948 Ed.), Section 311.110.

"Grounds for suspension; revocation; refusal to issue license. The board may suspend, revoke or refuse to issue any license to practice medicine for any of the following causes:

(1) Presentation to the board of any license certificate or diploma illegally or fraudulently obtained, or the practice of fraud or deception in passing an examination;

(2) The commission of a criminal abortion, or conviction of a felony involving moral turpitude.

(3) Chronic or persistent inebriety or addiction to a drug habit to an extent that disqualifies from practicing with safety to the people.

(4) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public."

APPENDIX A-2.

Kentucky Revised Statutes (1948 Ed.), Section 311.120.

"Hearing on suspension, revocation; appeal to Governor from any action concerning license.

(1) In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing. He may be heard in person and by counsel. The board may take oral or written proof for and against the complaint as it considers will best present the facts.

(2) Upon suspension or revocation of a license the board shall give official notice of its action, under seal, to the county clerk of the county in which the licensee is registered, and his name shall be marked as suspended for the period indicated or stricken from the register in accordance with the notice.

(3) In all cases of suspension, revocation or refusal to issue a license, the applicant or licensee may appeal to the Governor, who may affirm or overrule the decision of the board."

APPENDIX A-3.

Kentucky Medical and Osteopathic Practice Act of 1952, Section 15 (now K.R.S. 1955 Ed., Section 311.615(1)).

"Continuation of existing licenses; limitation of authority.

(1) All licenses heretofore issued by the board for the practice of medicine or osteopathy, or any limited school or system, are hereby declared to be valid and in full force and effect unless they have become expired, cancelled, suspended or revoked in accordance with law."

APPENDIX A-4.

Kentucky Medical and Osteopathic Practice Act of 1952, Section 18, Kentucky Acts 1952 (p. 400).

"Sections 311.010 to 311.130, inclusive, and Sections 311.270 to 311.290, inclusive and subsections (1), (4) and (5), inclusive of Section 311.990 of the Kentucky Revised Statutes are repealed."

APPENDIX A-5.

Kentucky Medical and Osteopathic Practice Act of 1952, Section 6(7) (now K.R.S. 311.570(7) 1955 Ed.).

"(7) No license shall be issued, refused, suspended or revoked by the board, nor shall any licensee be placed on probation, except in compliance with KRS 311.550 to 311.620 and the rules and regulations promulgated thereunder by the board and filed with the Secretary of State of this Commonwealth pursuant to KRS Chapter 13."

APPENDIX B-1.

SHOW CAUSE LETTER DATED APRIL 17, 1950.

"E. M. Howard, M. D., President
J. Watts Stovall, M. D., Grayson, Vice-President
F. M. Travis, M. D., Frankfort, Member
George S. Coon, M. D., Louisville, Member
Carl J. Johnson, D. O., Louisville, Member
Bruce Underwood, M. D., Louisville, Secretary
H. Fuller, M. D., Mayfield, Member
R. W. Robertson, M. D., Paducah, Member
C. B. Davis, Ph. G., Louisville, Member

COMMONWEALTH OF KENTUCKY
STATE BOARD OF HEALTH
620 South Third Street
Louisville 2, Kentucky

April 17, 1950

Dr. Stanley Bandeen
Fincastle Building
Louisville, Kentucky

Dear Doctor Bandeen:

You are hereby notified to appear for a hearing before the State Board of Health of Kentucky at the Frankfort

Country Club which is located one and one-half miles from Frankfort, Kentucky, on the Lexington road at 10:30 A. M. on the 18th day of May, 1950, to show cause why your license to practice osteopathy in the Commonwealth of Kentucky should not be revoked because of grossly unprofessional or dishonest conduct of character likely to deceive or defraud the public in the treatment of cancer and tuberculosis.

You may appear in person or by counsel or both, as you may desire.

State Board of Health,
By (s) Bruce Underwood, M.D.
Secretary."

Registered Return
Receipt Requested

APPENDIX B-2.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

SPECIAL DEMURRER.

Dr. Stanley Bandeen demurs specially to the conducting of any proceeding by the State Board of Health of Kentucky as to possible revocation of any license to practice osteopathy or any other branch of medicine, because

1. No complaint has been filed with said Board against Dr. Stanley Bandeen,

2. No copy of any such complaint has been furnished to Dr. Stanley Bandeen;

and only upon the occurrence of both said happenings does the State Board of Health have jurisdiction to hold such a hearing.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-3.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

MOTION FOR COPY OF THE COMPLAINT.

Dr. Stanley Bandeen, still objecting to the jurisdiction of the State Board of Health in holding this proceeding, moves the Board to furnish to Dr. Stanley Bandeen a copy of the complaint against him, if any, filed with said Board, and of the facts on which the charges are made.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-4.

SHOW CAUSE LETTER OF AUGUST 4, 1950, WITH COPY OF COMPLAINT.

August 4, 1950

Stanley G. Bandeen, D. O.
Fincastle Building
Louisville 2, Kentucky

Dear Doctor Bandeen:

Pursuant to an agreement reached with your attorney Honorable J. Blakey Helm, at your hearing in Frankfort on May 18, 1950, and pursuant to the provision of Chapter 311 of the Kentucky Revised Statutes, you are hereby cited to appear for a hearing before the State Board of Health in the offices of the Board at 620 South Third

Street, Louisville, Kentucky at 10:00 A.M., Central Daylight Saving Time, on Thursday, September 7, 1950, to show cause why your license to practice osteopathy in the State of Kentucky should not be suspended or revoked because of the charges which are outlined in the copy of the complaint which is attached hereto.

You may appear in person or by counsel or both, as you may choose. If you are unable to attend the hearing, you must present satisfactory, substantiating evidence to the State Board of Health or make some other arrangement satisfactory to the Board.

Respectfully,
Bruce Underwood, M.D.
Secretary

BU/bh
Encl.
Via—Registered Mail

APPENDIX B-4.

COPY OF COMPLAINT.

1. GENERAL CHARGE

The general charge is that of "grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public" as provided in subsection 4 of section 311.110 of the Kentucky Revised Statutes.

2. SPECIFIC CHARGES

The specific charges are as follows:

a. Defrauding the public with excessive charges.

b. The use of medicine of doubtful value; deceiving the patient with claims which are unjustified.

c. The failure to follow accepted diagnostic procedures prior to treatment.

d. Defrauding the public by intimidation of patients with scare tactics.

e. Defraud and deceiving the patients with unjustified promises of cure.

f. Statements made to patients which are likely to deceive them with relation to their physical condition.

g. The failure to provide for adequate relief of pain to the patients.

h. The prescription of diets which are contrary to accepted principles.

The specific charges above outlined refer to the following patients:

1. Mrs. Lucinda Limp, Salem, Indiana, who was treated on or about April, 1950.
2. Mr. J. Fred Herns (deceased), of Louisville, Kentucky, who was treated on or about February or March, 1950.
3. Mrs. Mary Frances Rucker of North Pleasureville in Henry County, treated sometime during 1943.
4. Mrs. A. E. Brooks of Shelby County, treated during 1937.
5. Mr. and Mrs. Williams, Waddy, Kentucky, treated during 1937.
6. Mrs. Sam Melton, Hopkins County, treated during February or March, 1950.

APPENDIX B-5.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

GENERAL DEMURRER.

Dr. Stanley Bandeen demurs generally to the pleadings and papers filed with the State Board of Health of Kentucky in this proceeding because no complaint has been filed with this Board as required by Section 311.120 (1) Kentucky Revised Statutes, and no other pleading or paper states facts sufficient for a complaint or for a proceeding against Dr. Stanley Bandeen.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-6.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

ANSWER.

Dr. Stanley Bandeen, still insisting that the State Board of Health of Kentucky, does not have jurisdiction to hold a hearing herein without the filing of a complaint and that facts have not been stated in any pleading or paper herein sufficient to authorize a proceeding against him, now says:

Paragraph I.

Dr. Stanley Bandeen denies the general charge and each and all of the specific charges contained in the paper filed in this proceeding, entitled 'Copy of Complaint'.

Paragraph II

No acts or conduct occurring more than ten years prior to the filing or starting of this proceeding can now be made the basis of a complaint or a charge because, under the provisions of Section 413.160 Kentucky Revised Statutes, any proceeding based on such acts or conduct must be commenced within ten years after the acts or conduct occurred.

Wherefore, Dr. Stanley Bandeen prays that the proceeding pending against him before this Board be dismissed.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-7.

"COMMONWEALTH OF KENTUCKY
STATE BOARD OF HEALTH

In the Matter of:

Stanley G. Bandeen,
Respondent.

FINDINGS AND ORDER OF STATE BOARD OF HEALTH.

This case coming on for decision at a meeting of the State Board of Health held on December 13, 1951, and the

undersigned, who constitute a majority of the members of said Board, having considered the record, evidence and briefs herein, the aforesaid State Board of Health, after deliberation in closed sessions, finds that the Respondent, Stanley G. Bandeen, a licentiate of said Board, has, while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of section 311.110 (4) Kentucky Revised Statutes.

Wherefore, the State Board of Health, acting pursuant to the authority conferred upon it by Sections 311.110 and 311.120 Kentucky Revised Statutes, and upon motion made by Dr. Carl J. Johnson, seconded by Dr. George S. Coon, which was unanimously adopted by the undersigned, hereby absolutely revokes any and all licenses heretofore issued by the said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs, and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky; this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120 (3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended pending decision by said Governor upon said appeal.

The Secretary of the State Board of Health is directed to make this finding and order a part of the minutes of the meeting of said Board, and to cause copies hereof to be forwarded to the Respondent and made a part of the record of this proceeding.

Done at Louisville, Jefferson County, Kentucky, on this the thirteenth day of December, 1951.

(Doctor Bruce Underwood, Secretary of the State Board of Health, did not participate in the above described deliberation or decision.)

State Board of Health

By (s) E. M. Howard
President and member

(s) J. Watts Stovall
Vice-President and member

(s) Geo. S. Coon
Member

(s) Wm. H. Fuller
Member

(s) F. M. Travis
Member

(s) R. W. Robertson
Member

(s) Carl J. Johnson
Member

(s) Clarence B. Davis
Member

I, Bruce Underwood, M. D., Secretary of the State Board of Health, certify that the foregoing is a true and correct copy of 'Findings and Order of the State Board of Health' in the above styled case that was made by said Board and signed by its members whose names appear thereon, at a meeting of said Board held at Louisville, Kentucky, on December 13, 1951.

Witness my hand at Louisville, Kentucky, this the fourteenth day of December, 1951.

(s) Bruce Underwood, M. D.,
Secretary State Board of Health

(State Board of Health
Seal)"

APPENDIX B-8.

"COMMONWEALTH OF KENTUCKY

Before the Governor of Kentucky.

To The Hon. Lawrence W. Wetherby, Governor

APPPEAL FROM ORDER OF THE STATE BOARD OF HEALTH.

This appeal to the Governor of Kentucky is from an order of the State Board of Health of Kentucky entered December 13, 1951, to be effective December 30, 1951, subject to appeal. A photostatic copy of that Order is filed herewith.

The appeal is by Dr. Stanley G. Bandeen, who was licensed to practice osteopathy in Kentucky in 1926, based upon prior admission to practice in Missouri, and who in 1932, along with all other persons holding license certificates by reciprocity, was required to take the general examination for practice of medicine and was in 1933 issued an unlimited license for practice of medicine. The appeal is taken pursuant to section 311.120 (3), Kentucky Revised Statutes.

The order from which this appeal is taken is a part of a paper entitled "Findings and Order of State Board of

Health'. It was entered on December 13, 1951, and the order part reads as follows:

> 'Wherefore, the State Board of Health, acting pursuant to the authority conferred upon it by Sections 311.110 and 311.120 Kentucky Revised Statutes, and upon motion made by Dr. Carl J. Johnson, seconded by Dr. George S. Coon, which was unanimously adopted by the undersigned, hereby absolutely revokes any and all licenses heretofore issued by the said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky; this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120 (3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended pending decision by said Governor upon said appeal.'

The appellant, Dr. Stanley G. Bandeen, respectfully states that the Order of the State Board of Health of Kentucky is illegal, unauthorized and in violation of appellant's rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, and that said Order should, for the reasons hereinafter set forth, be overruled and rescinded by the Governor.

Appellant states that the reasons or grounds upon which said Order is illegal, unauthorized and unconstitutional, are:

1. Proceedings for suspension or revocation of a license to practice medicine, including osteopathy, may be instituted only by some person filing with the State Board

of Health a complaint as provided in Section 311.120 Kentucky Revised Statutes, based upon some cause listed in Section 311.110 of said Statutes, and this proceeding was not so instituted.

2. In proceedings for suspension or revocation of a license to practice medicine, the statute requires that the holder of the license shall be furnished with a copy of the complaint, but despite several efforts by Dr. Bandeen's counsel to procure such copy, appellant has never been furnished, or received, a copy of any complaint.

3. The findings portion of said 'Findings and Order' does not state any finding of fact, but only conclusions of law, and does not inform anyone as to whether said finding is based on facts introduced in evidence or on information otherwise obtained.

4. The Findings of the State Board of Health on which its Order is based, is not sustained by the evidence, and is contrary to the evidence. The evidence does not prove any conduct, grossly or at all unprofessional, or dishonorable, or of a character likely to deceive or defraud the public, and does not show that appellant did deceive or defraud the public or certain or any patients or persons.

5. The State Board of Health conceived this proceeding to be an ex parte investigation, not a hearing by it as a tribunal, and used its employes as investigators and advisers, and permitted its own Secretary to testify at great length, not under oath, and to file with his testimony a five page memorandum, signed by him, not verified by any one, and prejudicial to appellant, with this statement (Tr., p. 81):

> 'We simply want to put into the record without any idea of proving it or that they are competent or anything, simply the statement that there are all of the list.'

6. The State Board of Health denied to appellant a fair, impartial hearing not only by the admission of unsworn testimony and a memorandum, but by refusing to limit the evidence before it to that presented to the Board at its scheduled hearing, the Chairman of the Board stating when objection made to consideration of other evidence (Tr., p. 37):

> 'I am sorry to disagree with you, but we are trying the case on what we can hear now *and* what we can get authentically and reliably through our investigators.' (Emphasis ours.)

7. The State Board of Health further denied to appellant a fair, impartial trial in that on the hearing the Secretary of the Board, who was acting as chief prosecutor, stated (p. 108) that this proceeding was limited to the three cases presented, and then he later discussed, at some length, a claimed mis-listing in a telephone directory, which had never been mentioned in any notice, complaint, charge-sheet or other paper prior to the hearing, and the Board's counsel further pressed this point, when in fact, it was doubtful if the listing was erroneous, and it was eliminated a year ago.

8. The State Board of Health has interpreted the law to place upon it investigating and detective duties, not delegated to it in any statute, and in performing this function, it has used its investigators, attorneys and other representatives to solicit complaints against medical practitioners, and said Board has made it practically impossible for it to hold a fair, impartial trial, because the witnesses are solicited by its representatives, its attorneys file pleadings for the Board, and appear in the name of the Board to prosecute proceedings before the Board, when this Board in its duties as to possible suspensions and revocations is constituted as an impartial tribunal to which

the Legislature has committed the duty of holding hearings on specific complaints; that such procedure was followed in this case despite appellant's objections, and this prevented a fair, impartial hearing.

9. Appellant has spent a great amount of study, time and money in preparing himself as an osteopathic physician and surgeon. This investment gives to appellant not only the desire to use his ability in the healing of the sick, but gives him a right which the law does not permit to be taken from him except for legal cause and through legal methods. No complaint was filed with the State Board of Health, or furnished to appellant; the evidence was not limited to facts presented at the hearing, and said Board has made no finding of facts, and the evidence does not show any unprofessional or dishonorable conduct. The Order made by the State Board of Health is, therefore, illegal, unauthorized and constitutes a denial to the appellant of equal protection of the law, and of due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

Appellant, Dr. Stanley G. Bandeen, prays that the Governor of Kentucky recognize his rights and overrule and rescind the said Order of the State Board of Health.

(s) Blakey Helm

Counsel for Appellant,
510 Marion E. Taylor Bldg.,
Louisville 2, Ky."

APPENDIX C-1.

FRANKLIN CIRCUIT COURT
No. 45819

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard,
Harlan, Kentucky,
J. Watts Stovall,
Grayson, Kentucky,
Bruce Underwood,
Louisville, Kentucky,
George S. Coon,
Louisville, Kentucky,
Thomas P. Leonard,
Frankfort, Kentucky,
W. H. Fuller,
Mayfield, Kentucky,
Carl J. Johnson,
Louisville, Kentucky,
R. W. Robertson,
Paducah, Kentucky,
Clarence Davis,
Louisville, Kentucky, individually and collectively as constituting the State Board of Health of Kentucky,
Lawrence W. Wetherby,
Governor of the Commonwealth of Kentucky,
Charles K. O'Connell,
Secretary of State of the Commonwealth of Kentucky, and
James F. Queenan,
Clerk of the Jefferson County Court, Louisville, Kentucky, - - - - - Defendants.

PETITION IN EQUITY.

Plaintiff, Stanley G. Bandeen, states that he is a resident of Shelby County, Kentucky; that he has been since 1926 duly authorized and licensed to practice osteopathy within the Commonwealth of Kentucky; and that he has been so engaged in the practice of osteopathy in Jefferson County since 1926.

Plaintiff states that the defendants, E. M. Howard, J. Watts Stovall, Bruce Underwood, George S. Coon, Thomas P. Leonard, W. H. Fuller, Carl J. Johnson, R. W. Robertson and Clarence Davis, are the duly appointed, qualified and acting members of the State Board of Health of Kentucky with official offices at 620 South Third Street, Louisville, Kentucky.

Plaintiff states that the defendants Lawrence W. Wetherby is the duly elected, qualified and acting Governor of the Commonwealth of Kentucky, and the defendant Charles K. O'Connell is the duly elected, qualified and acting Secretary of State of the Commonwealth of Kentucky, both of whose official residences are at Frankfort; that the defendant James F. Queenan is the duly elected, qualified and acting Clerk of the Jefferson County Court, whose official residence is at Louisville, Kentucky.

Plaintiff states that on or about April 17, 1950, the State Board of Health through its Secretary attempted to institute a proceeding against the plaintiff under the provisions of Section 311.110 and 311.120, Kentucky Revised Statutes, 1948 edition, then in effect; that in said proceeding the State Board of Health entered an order on December 13, 1951 by which said Board states that it "absolutely revokes any and all licenses heretofore issued by the said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs or to practice any healing art whatever within that Commonwealth of

Kentucky"; that said order provided that it was to become effective at midnight on December 30, 1951, unless prior thereto said order be appealed; that pursuant to the provisions of Section 311.120 (3), Kentucky Revised Statutes, 1948 edition, then in effect, plaintiff did file an appeal from said order to the Governor of Kentucky; and that on March 11, 1953, the Honorable Lawrence W. Wetherby, Governor of Kentucky, indicated his approval of said order entered December 13, 1951. A copy of said order of December 13, 1951, entitled "Findings and Order of State Board of Health" is filed herewith as Exhibit "A". A copy of the order entered by Governor Lawrence W. Wetherby on March 11, 1953, is filed herewith as Exhibit "B".

Plaintiff states further that the order which the State Board of Health attempted to make in the proceeding against this plaintiff was, and is, entirely void and of no effect because:

1. A proceeding for suspension or revocation of a license issued by the State Board of Health is required to be instituted by a complaint, stating specific acts or conduct that would be ground for suspension or revocation of a license under the provision of Kentucky Revised Statutes 311.110, 1948 edition, then in effect. No complaint stating any facts which constituted an offense under the provisions of said Section, or a violation thereof, was filed with said State Board of Health. Without the filing of such complaint the State Board of Health then had no jurisdiction to hold any hearing as to suspension or revocation of a license, and any order entered therein is void.

2. The method provided for instituting a proceeding for suspension or revocation of a license against the holder thereof, was specifically provided in Kentucky Revised Statutes, Section 311.120 (1) in part as follows:

"In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing."

No copy of any complaint at all filed against plaintiff with said State Board of Health was ever furnished to plaintiff even though plaintiff insisted upon such being provided to him and consistently objected to the hearing of any proceeding against him without the filing and furnishing to him of such complaint stating facts or conduct which were supposed to be grounds for suspension or revocation of a license. In lieu of the furnishing of any complaint, the State Board of Health merely sent to plaintiff a letter notifying him to appear "to show cause why your license to practice osteopathy in the commonwealth of Kentucky should not be revoked because of grossly unprofessional or dishonest conduct of character likely to deceive or defraud the public in the treatment of cancer or tuberculosis". Having failed and refused to furnish plaintiff a copy of any complaint, the State Board of Health had no jurisdiction to hear said attempted proceeding against plaintiff, and any order entered therein is void.

3. The said order of December 13, 1951 made and entered by the State Board of Health of Kentucky finds that plaintiff engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to and did deceive and defraud the public and certain patients and persons, within the meaning of Section 311.110 (4), Kentucky Revised Statutes. Said order was entered without any evidence or any facts or conduct on the part of the plaintiff in violation of Section 311.110 (4), Kentucky Revised Statutes, 1948 edition, then in effect, and is, therefore,

absolutely void and of no effect because there was no evidence upon which to base such an order.

4. Section 311.120, Kentucky Revised Statutes, constituted the State Board of Health a tribunal to hear and determine facts, to which the law might apply. The said order entered December 13, 1951 is designated "Findings and Order" but it contains no findings of facts or conduct, and plaintiff has never learned from said order or otherwise as to what acts or conduct of plaintiff's the said State Board of Health believed to have constituted a violation of Section 311.110 (4), Kentucky Revised Statutes, then in effect. Without such findings of facts, the State Board of Health had no right or authority to enter such order, and the entry of such order without making a finding of facts was arbitrary action and as such violated the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of Kentucky, Sections 1 and 2. Such an order without such finding is, therefore, entirely void.

5. Section 311.120, Kentucky Revised Statutes, then in effect, provided for notification to a license holder of any complaint with opportunity for such license holder to attend the hearing. It also provided that "The Board may take oral or written proof for and against the complaint as it considers will best present the facts."

In this case, the Secretary of the Board, sitting then as a member of the Board, assumed the role of prosecutor, testified at some length without being sworn. Upon objection, the Chairman ruled:

> "I understand, he is not a witness. He is presenting some facts, matters before the Board. He is not a witness.
>
> "He is a member of the Board, and he is furnishing information to the Board to help them to determine."

When the Secretary offered in evidence a long memorandum of hearsay statements, the objection to filing was overruled with this statement from the Chairman:

> "I am sorry to disagree with you, but we are trying the case on what we can hear now and what we can get authentically and reliably through our investigators."

Plaintiff does not know as to what further statements the Secretary or the investigators may have made to the Board, but the position taken by the Board amounted to a denial to plaintiff of a fair and impartial hearing of facts as guaranteed by the Fifth Amendment to the Constitution of the United States and Section 13 of the Constitution of Kentucky.

6. The licenses which plaintiff holds for the practice of osteopathy are valuable property rights. The absence of any complaint stating facts to constitute a violation of Section 311.110, Kentucky Revised Statutes, the failure and refusal of the State Board of Health to furnish to plaintiff a copy of a complaint, the refusal by said Board to give plaintiff a fair and impartial trial and the failure of said Board to make any findings of facts all make the entry of the order of December 13, 1951, as now attempted to be sustained, constitute the taking of property from plaintiff in violation of the Fifth Amendment to the Constitution of the United States and the First Section of the Constitution of the Commonwealth of Kentucky.

7. The said order, which was in fact void at all times, was appealed to the Governor of Kentucky as authorized by Section 311.120 (3), Kentucky Revised Statutes, 1948 edition, then in effect, but said appeal was not acted upon by the Governor of Kentucky at any time prior to June 19, 1952, or until March 11, 1953. On June 19, 1952, an Act of the General Assembly of Kentucky, passed at its 1952 ses-

sion as House Bill 137, designated as Chapter 150 of the Legislative Acts of Kentucky, became effective. By said Act the Legislature of Kentucky expressively repealed Sections 311.110 and 311.120, Kentucky Revised Statutes. Regardless of whether or not this order entered December 13, 1951 was or was not valid, the proceeding against plaintiff ended with the effective date of the repeal of said statutes. Any further steps in said proceeding which the State Board of Health had attempted to institute in such irregular manner and with such manifest unwillingness to disclose the basis, if any; of the claim of any violation of law by the plaintiff, became then entirely ineffective and any further steps taken or attempted to be taken in said proceeding, including any action by the Governor of Kentucky, were wholly unauthorized, illegal, ineffective and void.

Plaintiff states that unless restrained and enjoined by the Court the defendants will immediately execute the order of the State Board of Health as attempted to be affirmed by the Governor; that notice of the action of the Board and the affirmance by the Governor will be given to the defendant, County Court Clerk of Jefferson County, in which county plaintiff's license to practice osteopathy in the Commonwealth of Kentucky is registered; that his name shall be removed from the records of the County Court Clerk of Jefferson County as a licensed osteopath within the Commonwealth of Kentucky in accordance with the terms of said order.

Plaintiff states that unless enjoined and restrained by the Court he will suffer irreparable damage for which he has no adequate remedy at law and that irreparable injury will result to plaintiff from the delay of giving notice to the defendants.

Plaintiff states that he has not applied to any court or judge thereof for the injunction sought in this petition,

nor has said injunction been granted or refused by any court or judge thereof.

Wherefore, plaintiff, Stanley G. Bandeen, prays as follows:

(1) That the defendants, E. M. Howard, J. Watts Stovall, Bruce Underwood, George S. Coon, Thomas P. Leonard, W. H. Fuller, Carl J. Johnson, R. W. Robertson and Clarence Davis, individually or when acting collectively as the State Board of Health, be restrained and enjoined from giving notice of its action, under seal or otherwise, to the defendant, County Clerk of Jefferson County, in which the license of plaintiff is registered or from doing any other act, individually, or collectively toward enforcing or putting into effect its order of December 13, 1951, filed as Exhibit "A" to this petition.

(2) That the defendant, Lawrence W. Wetherby, be restrained and enjoined from enforcing his order of March 11, 1953, whereby he undertook to affirm the action of the State Board of Health in ordering that the license of plaintiff be revoked.

(3) That the defendant, Charles K. O'Connell, Secretary of State of Kentucky, be required to deliver to the Clerk of the Franklin Circuit Court the transcript of the hearing conducted by the defendant, State Board of Health, which transcript is now in possession of the defendant, Charles K. O'Connell; and when delivered, said transcript be made a part of the record herein and be considered as Exhibit "C" to plaintiff's petition; that the defendant, James F. Queenan, Clerk of the Jefferson County Court, be restrained and enjoined from marking the name of plaintiff from his records as a duly and regularly licensed osteopath or from striking the name of plaintiff from the register or record upon which the names of persons holding licenses to practice osteopathy in the Commonwealth of Kentucky are recorded.

(4) For an order setting aside the order of the State Board of Health dated December 13, 1951, and filed herewith as Exhibit "A" and the order of the defendant, Lawrence W. Wetherby, Governor of the Commonwealth of Kentucky, undertaking to affirm the order of December 13, 1951.

(5) Plaintiff prays that the defendants, and each of them, be temporarily restrained and enjoined by the Court from doing any of the acts hereinabove set forth and that upon hearing said injunction be made final and permanent.

(6) For his costs herein expended and for all other and further and proper relief to which plaintiff may appear entitled.

Blakey Helm,
Attorney for Plaintiff.

Plaintiff, Stanley G. Bandeen, first being duly sworn, states that he has read the allegations of the within petition and that they are true to the best of his knowledge and belief.

Stanley G. Bandeen

Subscribed and sworn to before me, a Notary Public, this 18th day of March, 1953.

My Commission expires August 23, 1956.

Allen Aoeth, Jr.,
Notary Public, Jefferson County, Ky.

APPENDIX C-2.

FRANKLIN CIRCUIT COURT
No. 45819

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al., - - - - - Defendants.

ANSWER.

For answer herein the defendants, E. M. Howard, J. Watts Stovall, Bruce Underwood, George S. Coon, Thomas P. Leonard, W. H. Fuller, Carl J. Johnson, R. W. Robertson and Clarence Davis, individually and collectively as constituting the State Board of Health of Kentucky, hereinafter called the Board, states as follows:

Paragraph One

The Board admits the first, second and third literary paragraphs of the petition of the plaintiff, Stanley G. Bandeen, herein.

The Board specifically denies each and every other affirmative allegation contained in the plaintiff's petition, except insofar as same are hereinafter expressly admitted in this answer.

Paragraph Two

On or about April 17, 1950, the Board, acting through Bruce Underwood, M.D., its Secretary, notified the plaintiff in writing to appear before the Board on May 18, 1950, to show cause why the plaintiff's license to practice

osteopathy in the Commonwealth of Kentucky should not be revoked because of grossly unprofessional and dishonorable conduct of a character likely to deceive and defraud the public (a copy of said notice appearing at page one of the Transcript of Record filed herein).

The plaintiff personally appeared before the Board on May 18, 1950, with his attorney, Blakey Helm, Esquire, of Louisville, Kentucky, who thereupon filed a special demurrer (which appears at page two of the Transcript of Record filed herein) and a motion for a copy of the complaint (which appears at page three of the Transcript of Record filed herein). On the same date the Board, by action reflected in the official minutes of its meeting held on May 18, 1950 (which appears at page fourteen of the Transcript of Record filed herein), overruled the special demurrer, but sustained the motion for a copy of the complaint and indefinitely continued the case without hearing any evidence at that time.

Thereafter, on August 4, 1950, the Board, acting through Bruce Underwood, M.D., its Secretary, notified the plaintiff in writing that the hearing had been set for 10:00 a.m. on September 7, 1950, at the offices of the Board at 620 South Third Street in Louisville, Kentucky (a copy of said notice appearing at page four of the Transcript of Record filed herein), and furnished to the plaintiff as an attachment to said written notice, a copy of the complaint containing a statement of general and specific charges (a copy of same appearing at page five of the Transcript of Record filed herein).

The plaintiff personally appeared before the Board, at its offices aforesaid at Louisville, Kentucky, on September 7, 1950, with his attorney, Blakey Helm, Esquire, of Louisville, Kentucky, who thereupon filed another special demurrer (which appears at page 2-A of the Transcript of Record filed herein), and a general demurrer (which

appears at page six of the Transcript of Record) both of which were overruled by the Board (as evidenced by orders appearing at pages twelve and thirteen of the Transcript of Record filed herein and as evidenced by pages six and seven of the Transcript of Proceedings filed herein). Thereupon plaintiff's counsel filed an answer (which appears at page seven of the Transcript of Record filed herein) and counsel for the Board filed a reply (which appears at page eight of the Transcript of Record filed herein).

Whereupon the hearing proceeded on September 7, 1950, at the offices of the Board at 620 South Third Street in Louisville, Kentucky, in a suitable room customarily used by the Board in holding its regular meetings, there being present the following persons who were duly appointed and qualified members of the Board: E. M. Howard, M.D., Bruce Underwood, M.D., J. Watts Stovall, M.D., F. M. Travis, M.D., George S. Coon, M.D., Carl J. Johnson, D.O., and C. B. Davis, Ph. G. A duly qualified Notary Public, James M. Yoder, of Jefferson County, Kentucky, was present and took down transcribed and compiled all testimony, evidence and exhibits, introduced at said hearing, and all objections, exceptions and rulings made thereat (which appears in the Transcript of Proceedings containing 144 typewritten pages, together with exhibits, certified by the said James M. Yoder and filed herein).

The Board admits that the quotations appearing in subparagraph numbered five of the plaintiff's petition are excerpts of remarks made by the President of the Board at the hearing, but states that they have been quoted by the plaintiff out of context and do not fully reflect the colloquy between the President of the Board and counsel for the plaintiff, and that the best evidence of what

actually took place at the hearing is the Transcript of Proceedings which has been filed herein.

Counsel for the plaintiff, having stated that he did not care to orally argue the case before the Board (see page 142 of the Transcript of Proceedings filed herein), was granted permission to file a brief with the Board (see said Transcript of Procedings pages 143-144). Thereafter the Board, on December 13, 1951, after duly considering the Transcript of Record and the Transcript of Proceedings, and briefs filed by counsel for the plaintiff and counsel for the Board, and also a decision of the Federal Trade Commission of the United States of America, dated September 4, 1951, Docket No. 4772 (a copy of which is filed as a part of this answer and marked "Exhibit A") finding that the so-called Koch Cancer Treatment has no therapeutic value but has adverse affects on some persons, and that it is a false, deceptive, and spurious treatment, reached the opinion that the plaintiff had, by prescribing and administering the so-called Koch Cancer Treatment, and by neglecting patients, and by charging excessive fees, and by recommending bizarre and unproven diets and drugs, and by falsely representing that he was licensed to practice medicine, and otherwise, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such a character that were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of Section 311.110(4) of the Kentucky Revised Statutes that were then in effect. Whereupon the Board entered a written finding that the plaintiff had engaged in acts and conduct that were grossly unprofessional and dishonorable and of such a character that they were likely to and did deceive and defraud the public and certain patients within the meaning of the above cited statute and, concurrently therewith ordered that any and all licenses previously

issued by the Board to the plaintiff to practice osteopathy, to administer drugs, and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky, be absolutely revoked; said finding and order was upon motion of the osteopathic member of the Board (Carl J. Johnson, D.O.) and was unanimously adopted and signed by all members of the Board, except Bruce Underwood, M.D., Secretary of the Board, who did not participate in the deliberation or decision of the Board conducted and reached by the Board in closed session after submission of the case. The written finding and order of the Board, bearing signatures as aforesaid, appears at pages numbered fifteen and sixteen of the Transcript of Record filed herein; a true and correct photostatic reproduction of same being attached to this answer as a part thereof and marked "Exhibit B".

The aforesaid proceeding before the Board was conducted in accordance with due process of law and in compliance with Section 311.120(1) of the 1948 edition of the Kentucky Revised Statutes which was then in effect and which read as follows:

> "In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing. He may be heard in person and by counsel. The board may take oral or written proof for or against the complaint as it considers will best present the facts."

The Board had and has authority to institute revocation proceedings upon its own initiative against the plaintiff, or any other person licensed by the Board to practice osteopathy or medicine, for any reasons set forth in the Kentucky statutes as grounds for revocation of such licenses, said authority being implicit under the above

quoted Section 311.120(1) of 1948 edition of the Kentucky Revised Statutes which provides that the Board shall have general supervision of the health of the citizens of this state, and also under Section 211.010 of Kentucky Revised Statutes which provides that the State Department of Health shall have and exercise all the administrative functions of the state in relation to public health and other matters including "the licensing and regulating the practice of professions and occupations for the protection of public health".

The Board had authority to revoke the plaintiff's license to practice osteopathy under Section 311.110 of the 1948 edition of the Kentucky Revised Statutes then in effect, which set out the causes for which a license could be suspended, revoked or denied, and after enumerating certain grounds in subparagraphs (1), (2) and (3) thereof, also provided as follows:

> "(4) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public."

The proceedings before the Board were administrative, and not judicial in character, and therefore the rules of law relating to administrative proceedings, rather than rules of law relating to judicial proceedings, were applicable thereto. The plaintiff had adequate notice of the hearing, and of the complaint as set forth in the charges. The plaintiff was present in person and was represented throughout by eminent and able counsel, Blakey Helm, Esquire, of Louisville, Kentucky. The plaintiff and his counsel fully participated in the hearing and did not request or seek a continuance on the grounds of surprise or otherwise, after counsel for the Board closed the evidence in chief against the plaintiff. Therefore the plaintiff is now estopped from

claiming that the notice was inadequate or that he was taken by surprise. Although the hearing was held on September 7, 1950, and the Board's finding and order was not entered until December 13, 1951, the plaintiff did not move for a reopening of the case on the grounds of surprise, newly discovered evidence, or otherwise, prior to the Board's decision on December 31, 1951, or at all. Therefore he waived any right to claim inadequacy of notice or surprise.

The aforesaid finding and order of the Board dated December 13, 1951, was and is valid and has not been redered invalid or inoperative in any respect by the enactment of Chapter 150 of the Acts of the General Assembly of Kentucky of 1952 which provides in substance, by Section 15(1) thereof, that said Act of 1952 shall not be construed to validate any license that was revoked by the Board in accordance with law prior to the effective date of said 1952 Act.

The license previously issued by the Board to the plaintiff was absolutely revoked by the Board in accordance with law on December 13, 1951, which was more than six months before said Act of 1952 became effective on June 19, 1952. The Board, in its desire to be eminently fair to the plaintiff, provided in its order of revocation that the order of revocation "stand suspended" pending decision by the Governor of Kentucky if an appeal was taken by the plaintiff to said Governor, under Section 311.120(3) of the 1948 edition of the Kentucky Revised Statutes, then in existence, prior to midnight on December 30, 1951. Prior to midnight on December 30, 1951, the plaintiff took an appeal to the Governor of Kentucky under the aforesaid statute then authorizing same and accordingly the Board refrained from giving notice to the County Court Clerk of its order of revocation pending decision by the Governor on said appeal.

Chapter 150 of the Acts of Kentucky General Assembly of 1952 referred to above incorporated into subsection (h) of subsection (1) of section 11 thereof dishonorable or unprofession conduct of a character likely to deceive or defraud the public as ground for license revocation by the Board, but it repealed the former statutory provision that authorized an appeal to the Governor of Kentucky from the Board's order of revocation and provided in lieu thereof, by Section 11(4), that the exclusive method of procuring judicial review of the Board's order of revocation shall be by a declaratory judgment action in the Jefferson Circuit Court. Notwithstanding these provisions in Chapter 150 of the 1952 Act, plaintiff's counsel personally appeared before Honorable Marion Rider, Commissioner appointed by Governor Lawrence Wetherby to hear, consider, report and make recommendation on the appeal, on at least two occasions after said Act of 1952 became effective and represented and contended, orally and by written briefs, that the plaintiff was entitled to proceed with the appeal and that said appeal should be decided under the statute law as it existed on December 13, 1951, the date of the Board's order revoking plaintiff's license. Neither the plaintiff nor his counsel contended or suggested that the 1952 Acts invalidated, impaired or affected said order of revocation but, on the contrary, vigorously asserted that the plaintiff was entitled to have his appeal decided by the Governor under the statute law that existed in December, 1951. Accordingly, counsel for the Board, as further evidence of the Board's desire to be eminently fair to the plaintiff, interposed no objection to the matter being decided by the Governor on the appeal taken by the plaintiff before the effective date of the 1952 Act referred to above. By reason of said representations, acts and conduct on the part of the plaintiff and his counsel, which plaintiff and his counsel now wrongfully seeks to repudiate, the

plaintiff is now estopped from claiming that said Chapter 150 of the 1952 Acts of the General Assembly of Kentucky rendered the Board's order of revocation dated December 13, 1951, invalid or ineffective in any manner whatsoever, and is also estopped from claiming that the Governor of Kentucky was without authority to affirm and sustain said order.

Under date of January 14, 1953, the said Commissioner Rider, after considering the case, and oral and written arguments made by counsel for the plaintiffs and the Board, correctly reported to Honorable Lawrence W. Wetherby, Governor of the Commonwealth of Kentucky, that the evidence supports the finding and order of the Board, dated December 13, 1951, revoking the plaintiff's license (a true and correct copy of said report of Commissioner Rider is attached to this answer as a part hereof and marked "Exhibit C-1").

Under date of March 11, 1953, the Honorable Lawrence W. Wetherby, the duly elected and qualified Governor of Kentucky, signed and entered a decision correctly sustaining the finding and order of the Board, dated December 13, 1951, revoking the plaintiff's license (a true and correct copy of said decision of the Governor Wetherby is attached to this answer as a part thereof and marked "Exhibit C-2").

Both the report of Commissioner Rider and the decision of Governor Wetherby, referred to above, were filed by the Governor of Kentucky (as evidenced by the certificate of Charles K. O'Connell, Secretary of State of Kentucky, which is attached to this answer as a part hereof and marked "Exhibit C-3").

Under date of March 17, 1953, the Board notified the plaintiff of the decision of Governor Wetherby referred to above. Whereupon the plaintiff, for the purpose of attempting to further delay the Board in putting into effect its

order, dated December 13, 1951, absolutely revoking the plaintiff's license, instituted this action.

The Board has not sought to deny to the plaintiff recourse to the courts from the Board's order to revocation dated December 13, 1951. However, if it should be held, as contended by the plaintiff, that Chapter 150 of the 1952 Acts of the General Assembly of Kentucky terminated the right of the Governor of Kentucky to decide the plaintiff's appeal taken to the said Governor by the plaintiff under the previously existing Section 311.120(3) of the Kentucky Revised Statutes, then and in that event the Board's Order of revocation, dated December 13, 1951, became of full force and effect by operation of law on June 19, 1952, which was the effective date of the aforesaid 1952 Act, and the Franklin Circuit Court is without jurisdiction to entertain this action in view of Section 11(4) of the said 1952 Act which provides that all actions to procure judicial review of orders of the Board suspending or revoking licenses shall be in the Jefferson Circuit Court and must be filed in said Court within thirty days after the plaintiff is notified of such Board orders. Therefore, if it should be held that the decision of the Governor of Kentucky referred to above is invalid because of enactment of the aforesaid 1952 Act of the General Assembly of Kentucky, the Board expressly pleads that this Honorable Court (Franklin Circuit Court) was and is without jurisdiction to entertain the plaintiff's petition herein and that the Clerk of said Court was and is without authority to issue a restraining order herein for the reasons stated above.

Wherefore, the above named defendants pray that the temporary restaining heretofore issued herein by the Clerk of the Franklin Circuit Court be dissolved, set aside and held for naught, and that the plaintiff's application for an injunction be denied, and that the plaintiff's petition be

dismissed and that he take nothing thereby, and that all costs in this action be assessed against the plaintiff.

Martin R. Glenn,
Ernest W. Rivers,
of Louisville, Kentucky,
Attorneys for the State Board
of Health.

The affiant, Bruce Underwood, M. D., states that he is Secretary of the State Board of Health, and that the statements in the foregoing answer are true to the best of his knowledge, information and belief.

Witness my hand this the 23 day of April, 1953.

Bruce Underwood, M. D.

State of Kentucky }
County of Jefferson }

Sworn and subscribed to before me by Bruce Underwood, M. D., this the 23rd day of April, 1953.

My commission expires August 27, 1956.

Betty P. Polsgrove,
Notary Public,
Jefferson County, Kentucky.

(Notary Public Seal)

APPENDIX C-3.

FRANKLIN CIRCUIT COURT

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al., - - - - Defendants.

REPLY.

Plaintiff, Stanley G. Bandeen, for reply to Paragraph Two of the Answer filed herein, says that plaintiff denies that the State Board of Health at any time furnished to plaintiff a copy of any complaint against him, and denies that the hearing on September 7, 1950 was in a suitable room (being the office of the Secretary of the State Board, who tried to deny admission to persons wanting to attend), and denies that the exhibit, included in the transcript entitled In re: Proceedings Against Dr. Stanley G. Bandeen, is a part of the evidence in the proceeding heard by the State Board of Health.

Plaintiff denies that the quotations in the petition are out of context, denies the allegation that same do not reflect the colloquy properly.

Plaintiff denies knowledge as to whether or not the State Board of Health considered a decision of the Federal Trade Commission, as no such decision was filed in evidence or appears in the Record of the proceedings; and plaintiff denies that the State Board of Health made any of the specific findings of facts set out in Paragraph Two of the Answer; and plaintiff denies the allegation that Dr.

Bruce Underwood did not participate in the deliberation or decision of the Board.

Plaintiff denies that the proceeding was conducted in accordance with due process of law or in compliance with Section 311.120(1) of Kentucky Revised Statutes then in effect, and denies that the State Board of Health had or has authority to institute revocation proceedings against the plaintiff or any other person licensed to practice osteopathy or medicine for any reason; and plaintiff denies that the State Board of Health had authority to revoke plaintiff's license to practice osteopathy under Statutes then in effect, and denies that the proceedings before the State Board was administrative in character and denies the allegation that the proceeding was not judicial and the allegation that the rules of law relating to judicial proceedings were not applicable.

Plaintiff admits that he had thirty (30) days notice of the hearing on September 7, 1950, but denies that he had adequate or any notice of any complaints under said Statute, and denies that because of attending said hearing, or for any reason, plaintiff is estopped to claim that the notice was inadequate, and denies that by failing to move for a re-opening, he has waived any rights.

Plaintiff denies that the finding or order of the Board dated December 13, 1951 was or is valid, and denies the allegation that same has not been rendered invalid or inoperative by subsequent legislation, and denies that Chapter 150 of the Acts of the General Assembly provides that said Act shall not be construed to validate any license revoked prior to effective date of said Act.

Plaintiff denies that the license issued to plaintiff was at any time absolutely revoked.

Plaintiff admits that pursuant to notice from Honorable Marion Rider, his counsel appeared before said Commissioner, but plaintiff denies that his counsel at any time

represented or contended orally or by written briefs, or at all, that plaintiff was entitled to proceed with the appeal; and plaintiff denies that for any reason plaintiff is estopped to claim that the specific repeal of the previous law by Chapter 150 of the Act of 1952 rendered the Order of December 13, 1951 invalid or ineffective, or that the Governor was, when he attempted to affirm said Order, without authority to do so.

Plaintiff admits that he instituted this action, and says that this was for the purpose, not of delaying, but of permanently preventing the State Board of Health from putting into effect an order, entered December 13, 1951, in an unauthorized proceeding, which order was void when entered and which never became effective while the Statute under which it was brought, remained in effect.

Plaintiff denies that the Board's Order of revocation, dated December 13, 1951, ever became of full force or effect, and denies the allegation that this Court is without jurisdiction to entertain this action, or that an order entered in December, 1951 could be given judicial review under Chapter 150 of the Acts of 1952 by appeal to the Jefferson Circuit Court or to any Court.

Wherefore, plaintiff, Stanley G. Bandeen, prays as in his petition.

Blakey Helm,
Attorney for Plaintiff.

APPENDIX C-4.

"FRANKLIN CIRCUIT COURT.
January 20, 1954
No. 45819.

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al.,
State Board of Health of Kentucky, et al., - Defendants.

OPINION.

The restraining order is set aside and plaintiff's motion to strike and his general demurrer to Defendants' answer is overruled.

The appeal from the Governor's Order should be and is dismissed.

(s) W. B. Ardery,
Judge, Franklin Circuit Court."

APPENDIX C-5.

"FRANKLIN CIRCUIT COURT
No. 45819.

Stanley G. Bandeen, - - - - - Plaintiff,

v.

E. M. Howard, et al.,
State Board of Health, et al., - - - Defendants.

JUDGMENT.

This action having been substituted for trial and judgment, pursuant to an agreed order entered herein on or about May 7, 1953.

And the Court having considered the pleadings and exhibits thereto, and the transcripts of record and evidence of proceedings before the State Board of Health, and the plaintiff's motion to strike and general demurrer to Defendants' Answer, and all other matters that were filed herein.

And the Court having also considered the briefs filed on behalf of the parties hereto by counsel for the plaintiff and by counsel for the defendants.

Now, therefore, the Court, being sufficiently advised, orders and adjudges as follows:

(1) That the Plaintiff's motions to strike and general demurrer to the defendants' answer, be and they are hereby overruled:

(2) That the temporary restaining order heretofore issued herein by the Clerk of this Court, be and the same is hereby dissolved, vacated and set aside;

(3) That the plaintiff's petition herein be and the same is hereby finally dismissed and that the plaintiff receive nothing thereby;

(4) That the defendant have and recover of the plaintiff, Stanley G. Bandeen, all costs herein, for which execution may issue.

Exceptions are reserved to the plaintiff to all the foregoing.

W. B. Ardery,
Judge."

APPENDIX C-6.

COURT OF APPEALS OF KENTUCKY
October 5, 1956

Stanley G. Bandeen, - - - - - - Appellant,

v.

E. M. Howard, Et Al., - - - - - Appellees.

Appeal from Franklin Circuit Court,
Honorable W. B. Ardery, Judge.

OPINION OF THE COURT BY JUDGE STEWART—AFFIRMING.

Stanley G. Bandeen filed this suit in the Franklin Circuit Court seeking to enjoin the State Board of Health of Kentucky (herein referred to as "the Board") from enforcing its order revoking his license to practice osteopathy

in Kentucky. The circuit court denied the injunction and Bandeen appeals, urging these grounds for reversal: (1) The Board had no jurisdiction of the case; (2) there was no evidence to support the Board's order; (3) its order was void because it made no findings of fact; (4) Bandeen was denied a fair and impartial trial; and (5) the proceeding became a nullity when the statute under which the Board was proceeding was repealed.

Bandeen was admitted to the practice of osteopathy in Missouri in 1922 and in 1926, through reciprocity, was licensed to pursue the same profession in Kentucky. At the hearing before the Board, he admitted that he did not hold the degree of Doctor of Medicine; that he had no right to use the professional title of "Doctor of Medicine" or its abbreviation, "M. D."; and that he was not entitled to engage in the general practice of medicine or surgery.

On April 18, 1950, Bandeen received a letter from the secretary of the Board notifying him to "show cause" within thirty days why his license should not be revoked because of "grossly unprofessional or dishonest conduct of a character likely to deceive or defraud the public in the treatment of cancer and tuberculosis." This proceeding was pitched under KRS 311.110(4), then in force. Bandeen appeared and filed special and general demurrers on the grounds that no complaint had been entered against him and that he had not been furnished with a copy of any complaint that might have been filed against him pursuant to KRS 311.120(1), which was in effect at the time. Thereupon this meeting of the Board was adjourned and thereafter the secretary of the Board, by a communication dated August 4, 1950, notified Bandeen of a hearing to be held before the Board on September 7, 1950, and attached a copy of a complaint setting out certain specific charges. These charges were, briefly stated, using medicines of doubtful

value, imposing excessive charges, making unjustified promises of cure and deceiving patients about their physical condition, following unorthodox diagnostic procedures, employing scare tactics, and failing to provide for adequate relief of pain. A list of six patients and their dates of treatment, with reference to whom the charges were made, was appended. This complaint was demurred to on the ground that the notice did not give sufficient information as to the time and place of the treatments and as to the parties involved. The demurrer was overruled.

Bandeen's challenge to the jurisdiction of the Board is bottomed upon the contention that it initiated the instant proceeding against him in its name, whereas it is maintained the correct mode of preferring charges against him was by the verified complaint of some individual. This position is untenable. There was nothing in the applicable statutes in effect in 1950 which prohibited the Board from instituting a revocation proceeding upon the basis of information received by it or by any member thereof. It is well established that in the absence of express statutory restraints an administrative agency may inaugurate investigations and hearings of the character under discussion on its own motion. This is one of the distinctive functions of such agencies which sets them apart from the courts. See 42 Am. Jr., Public Administrative Law, Sec. 31, p. 323; Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 84 L. Ed. 656, 662.

The second ground alleged as error is that the evidence does not sustain the Board's order of revocation. This assertion requires an examination of the evidence. However, before we give a summary of the proof, attention should be called to the fact that an exhibit in the record shows Bandeen was listed in the classified ad section of the Louisville telephone directory as a "Doctor of Medi-

cine". The secretary of the Board stated that demands had been repeatedly made upon Bandeen, beginning as far back as 1944, to discontinue this type of listing, but such demands were not acceded to until shortly before the hearing of this case by the Board. Bandeen frankly admitted at the hearing he had no right to advertise as a "Doctor of Medicine". We believe his action in holding himself out in the manner we have indicated, knowing full well he was practicing a deception upon the public in respect to his professional status, constituted an unethical act tantamount to fraud. See 41 Am. Jur., Physicians and Surgeons, Sec. 51, p. 178.

The label of "miracle doctor" had become attached to Bandeen in the community where he practiced. He denied he ever referred to himself in such fashion, but he freely conceded he was recognized for his outstanding curative powers and indicated this reputation was justified because of the "marvelous recoveries" he had effected by the type of treatments he employed. He administered the so-called "Koch shots" to patients he diagnosed to have cancer. His charges for these shots ranged from $100 to $150. He testified he procured the substance he injected into his patients from an organization or cult known as the Christian Medical Research League of Detroit, Michigan, at a cost of $25 per shot. When one of the Board members inquired whether his charges for the shots were not out of proportion to their cost, he claimed every treatment also included an examination of the "eyes, ears, nose, throat, heart, lungs, rectum, nerves, teeth, tonsils, etc." He declared he was aware the "Koch shots" had been fully investigated by the American Medical Association and had not been recommended by it. He also stated he was virtually the only practitioner in Kentucky who subscribed to this method of treatment.

One of Bandeen's patients, Mary Frances Rucker, was pronounced by him to have a cancerous tumor and, accord-

ing to her husband, Everett Rucker, she grew worse and Bandeen said he could cure her and gave her three "Koch shots", charging $100 for each. When Bandeen went to see her he made a remark in the presence of both Rucker and his wife that a rubber sheet should be placed under the latter because "she's going to burst wide open and die right now." Rucker stated his wife was in great pain and Bandeen did nothing to relieve her. He also testified Bandeen's statement so frightened his wife that she "went crazy as a bedbug" and had to be later confined in the Central State Hospital as a lunatic where she remained about two months. She died some sixteen months later.

Lue Limp testified Bandeen performed hemorrhoid surgery upon her, charging her $150 for the operation. He told her "cancer would be her trouble later", and offered to give her a cancer shot for an additional $150. She said this diagnosis induced her to submit to an injection. Subsequently she went to Doctor Henry Ashman who operated on her for hemorrhoids and advised her she did not have cancer.

John Fred Herms, who had been twice operated upon for a cancerous condition in the throat and had been informed he did not have long to live, went to Bandeen for treatment when he heard he was a "miracle doctor". Bandeen said he considered Herm's case hopeless. Nevertheless, he administered a shot to Herms. The latter's mother testified that while he was suffering excruciating pains, Bandeen gave him some tablets which he enjoined him not to take unless he had "dying pains". Herms died five days later.

Bandeen took the stand and testified in his own behalf and introduced only one witness, his office nurse. The tenor of his testimony, as a whole, was to justify his curative methods.

On December 13, 1951, upon the basis of the evidence recited, the Board found that Bandeen "while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of KRS 311.110(4)."

The general rule is that, in the absence of statutory directions (and there is no direction in our law), the findings of fact of an administrative board, such as the State Board of Health, are conclusive upon a reviewing court, if such are supported by substantial evidence, and even if such are based upon conflicting evidence. See 42 Am. Jur., Public Administrative Law, Sec. 211, p. 626. Such findings of fact should not be disturbed where the board had jurisdiction of the case and acted honestly and impartially, and not arbitrarily: See 70 C.J.S., Physicians and Surgeons, p. 904. See also Board of Health of Covington v. Kollman, 156 Ky. 351, 160 S. W. 1052.

Uncontroverted testimony was developed to the effect that Bandeen had paid for a listing in the Louisville telephone directory as a "Doctor of Medicine", although he did not have this professional status, and had in 1944, and several times thereafter, been warned by the Board to have the listing removed, which warning he ignored until this proceeding was begun. He also gave the so-called "Koch shots" for cancer treatments, with knowledge that after investigation the American Medical Association had branded the use of such a substance valueless therapeutically. It was brought out that Bandeen charged $100 to $150 for each "Koch shot" while the cost of each shot was only $25. He gave conflicting testimony as to what the services for each charge involved. It was stated Bandeen refused to relieve pain on two occasions and employed methods that terrorized on another. All this was

denied by him. There was proof that Bandeen claimed in several instances that "Koch shots" would cure cancer. He refuted this testimony in part.

Considering the evidence which was not controverted and that which the Board could have believed, it could only with difficulty be held that its order was not supported by any substantial evidence. Nor can it be said its decision was not an honest and impartial one. In Forman v. State Board of Health, 157 Ky. 123, 162 S. W. 796, this language appears: "Whether the physician's acts were sincere or fraudulent and done for the purpose of defrauding the public is a question to be decided by the Board on all the facts.

The testimony introduced before the Board concerned patients diagnosed and treated by Bandeen as cancer cases. It is common knowledge that medical science has yet discovered no drug that will cure this disease in its malignant state. Despite this fact, it will be recalled Bandeen gave assurance, according to the testimony of Everett Rucker, that he could heal the latter's wife who was suffering from cancer in an aggravated form. He gave her three "Koch shots" at a cost of $100 per shot. Her illness was so advanced it should have been apparent to Bandeen that he could do nothing to save her life. It has been held that the acceptance of money upon the promise or representation of being able to cure a disease regarded by the consensus of medical opinion as incurable constitutes such unprofessional and dishonorable conduct as would warrant a license revocation. See Freeman v. State Medical Examiners, 54 Oklahoma 531, 154 Pac. 56.

It is next argued the order was a nullity because it did not set out any findings of fact. The statute under which the proceeding was instituted and conducted did not require that such be done. Written special findings by administrative agencies are not necessary in order to meet

due process of law requisites. See Davis on Administrative Law (1951 Ed.), pp. 524 and 526. It has been held that a revocation of license for "unprofessional conduct" was valid, although it was not supported by a written particularization of evidentiary facts, since the record itself supplied these matters. See Duvall v. Board of Medical Examiners of Arizona, 19 Ariz. 329, 66 Pac. 2d 1026. In Barren v. Board of Dental Examiners of the State of California, 44 Cal. App. 2d 790, 113 P. 2d 247, a finding that one of its licensees was "guilty as charged in the accusation" was sufficient to support an order of license revocation; and in State ex rel. Ball v. State Board of Health, 325 Mo. 111, 26 S. W. 2d 773, an order to revoke a license was adjudged adequate, even though the record did not recite that the licensee stood convicted of the offense charged.

Bandeen's insistence that he was not accorded a fair and impartial trial is based upon a two-fold argument: (a) That the secretary of the Board was antagonistic toward him at the hearing which prevented his receiving neutral treatment and that this officer was allowed to read a report he had compiled concerning Bandeen's alleged professional misconduct; and (b) that in September, 1951, over a year after the hearing, counsel for the Board filed with it a copy of an opinion and an order of the Federal Trade Commission in the Matter of Koch Laboratories, Inc., etc., as respondents. Briefly stated, this opinion held that the so-called "Koch shots" in their various compounds have no therapeutic value in cancer or tuberculosis treatment, nor any beneficial effects as healing drugs, and, furthermore, that they have adverse effects on some persons when employed as a curative agent; and the order directed the respondents to cease disseminating these preparations by any means in commerce. The Federal Trade Commission opinion was later affirmed by the

United States Court of Appeals for the Sixth District. See Koch, et al. v. Federal Trade Commission, 206 F. 2d 311. Bandeen asserts he was not given an opportunity to produce counter evidence on the report and on the opinion.

It is true the secretary of the Board did much of the questioning of Bandeen, but this was not improper under the circumstances. Also, during the hearing, the secretary was permitted to give general information surrounding the complaints against Bandeen over the years. Bandeen argues this was prejudicial and denied him a fair hearing. It is patent the secretary's statements were pure hearsay and not competent for any purpose. However, Bandeen was given ample opportunity to introduce rebuttal evidence. Proceedings before administrative boards are informal and a wide latitude is allowed in taking proof and the technical rules of procedure are not ordinarily enforced. See Goodrich v. Selligman, 298 Ky. 863, 183 S. W. 2d 625. The secretary abstained from voting to revoke Bandeen's license. Furthermore, there was ample evidence other than that contained in the report of the secretary to sustain the Board's order. As to Bandeen's theory that he was dealt a wrong because the Board relied upon the Federal Trade Commission opinion in arriving at the conclusion is reached, our answer to that is the opinion was a finding of law, and not one of fact, hence the Board could take judicial notice of it. Especially is this true since the Federal Trade Commission opinion was later affirmed by the Sixth United States Circuit Court of Appeals.

KRS 311.120(3), before its repeal, provided that a licensee whose license had been revoked by the Board "may appeal to the Governor who may affirm or overrule the decision of the Board." Bandeen appealed to the Governor after the Board entered its order on December 13, 1951. While the matter was pending before the Governor,

the General Assembly at its 1952 session passed a comprehensive Act relative to physicians, osteopaths and chiropodists, now KRS Chapter 311, which became effective June 19, 1952, and which repealed KRS 311.110 (1948 Ed.). By KRS 311.595(1) (1953 Ed.), the Board retained its authority to revoke licenses on an expended number of grounds, and these included the four listed under the repealed statute. The new enactment deleted the right of an appeal to the Governor, set forth in KRS 311.120(3), a part of the old Act. However, the Governor nevertheless reviewed the proceeding before the Board and upheld it.

Bandeen earnestly insists that the Board's order was voided while his appeal was pending before the Governor, since KRS 311.120(3) (1948 Ed.) was repealed without a saving clause. We do not agree. The simultaneous repeal and the reenactment of substantially the same statute, or of portions of it, do not at common law work a repeal of the former act, but the substituted statute is construed as a continuation of the original provisions. Jones v. Kentucky State Board of Dental Examiners, 291 Ky. 136, 163 S. W. 2d 297. The jurisdiction of the Board was not disturbed, and the appellate jurisdiction was simply transferred from the Governor to the Jefferson Circuit Court. Since the new legislation did not impair the previously existing right, nor deny a remedy for its enforcement, but only modified the proceedings while providing a similar remedy, the jurisdiction continues under the forms directed by the repealing act, in so far as the two acts differ. Kingan & Co. v. Ossam, 75 Ind. 548, 121 N. E. 289.

It would seem that, upon repeal of the section conferring jurisdiction upon the Governor to pass upon an appeal of this kind, Bandeen should have appealed to the Jefferson Circuit Court, the only body with jurisdiction to hear the appeal under the existing law, and that, failing to follow

this designated procedural step, he should be denied injunctive relief for this reason also.

Wherefore, the judgment is affirmed.

Attorney for Appellant:

BLAKEY HELM,
510 Marion E. Taylor Building,
Louisville, Kentucky.

Attorneys for Appellees:

MARTIN R. GLENN,
Marion E. Taylor Building,
Louisville, Kentucky,

JOHN P. GODFREY, JR.,
620 South 3rd Street,
Louisville, Kentucky,

WYATT, GRAFTON & GRAFTON,
300 Marion E. Taylor Building,
Louisville, Kentucky.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
JUL 18 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. [redacted] 132

STANLEY G. BANDEEN, - - - - - - Petitioner,

versus

E. M. HOWARD, J. WATTS STOVALL, BRUCE UNDERWOOD, GEORGE S. COON, THOMAS P. LEONARD, W. H. FULLER, CARL J. JOHNSON, R. W. ROBERTSON, CLARENCE DAVIS, Individually and Collectively as Constituting the STATE BOARD OF HEALTH OF KENTUCKY, and

JAMES F. QUEENAN, Clerk of the Jefferson County Court, - - - - - - - Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

WILLIAM A. LAMKIN, JR.,
JOHN P. GODFREY, JR.,
620 South Third Street,
Louisville 2, Kentucky,
Counsel for Respondent.

Dated: July 1, 1957.

WESTERFIELD-BONTZ CO., INCORPORATED, LOUISVILLE, KY.

INDEX.

	PAGE
Opinions Below	2
Jurisdiction	3
Statutes Involved	3–4
Questions Presented	4–6
Statement of the Case	6–17
1. Proceeding Before the Board	6–11
2. Proceedings Before the Governor	11–14
3. Proceedings in the Franklin Circuit Court	14–15
4. Proceedings in the Court of Appeals of Kentucky	15–16
5. Exceptions to Statements of Fact and Inferences in Petition	16
a. Bandeen Is Not an M.D.	16–17
b. Bandeen Was Never Issued a License to Practice Medicine by the Board	17
c. Bandeen Received a Copy of the Board's Complaint	17
Argument	18–45
1. The Case at Bar Rests on a State Jurisdictional Ground Adequate to Sustain it Independent of Any Federal Question and Therefore This Honorable Court is Without Jurisdiction	18–23
2. The State Board of Health of Kentucky Had Jurisdiction to Hear Proceedings to Revoke the License of Dr. Bandeen to Practice Osteopathy	23
a. Licenses to Practice Healing Arts Are Revocable	23

PAGE

b. Grossly Unprofessional or Dishonorable Conduct of a Character Likely to Deceive or Defraud the Public Constitutes Valid Grounds for License Revocation.....24–25

c. The Board Possessed Authority to Initiate the Proceeding..... 26

d. Notice of the Hearing was Adequate.....27–32

3. Bandeen Was Afforded a Fair and Impartial Trial.....33–37

4. The Decision of the Court of Appeals of Kentucky as to the Construction and Application of its Own Statutes is Binding Upon the Supreme Court of the United States.....38–45

a. The Medical and Osteopathic Practice Act of 1952 did not invalidate the Board's Order of License Revocation.....38–40

b. The Board's Findings and Order of Revocation Were Legally Sufficient.....40–45

Conclusion..... 45

TABLE OF CASES AND TEXTS CITED.

	PAGE
McGoldrick v. Gulf Oil Corp., 309 U. S. 2, 84 L. Ed. 536, 60 S. Ct. 375, vacated on rehearing in 309 U. S. 692, 84 L. Ed. 1034, 60 S. Ct. 512	18
Lynch v. New York, 293 U. S. 52, 79 L. Ed. 191, 55 S. Ct. 16	18
54 American Jurisprudence, Sec. 263, p. 901	18
Petrie v. Nampa & Meridian Irrigation Dist., 39 S. Ct. 25, 248 U. S. 154, 63 L. Ed. 178	18
36 Corpus Juris Secundum, Federal Courts, Sec. 244, pp. 150, 151	18
State Tax Commissioner of Utah v. Van Cott, 59 S. Ct. 605, 306 U. S. 511, 83 L. Ed. 950	18
54 American Jurisprudence, Sec. 215, p. 847	19
Flournoy v. Wiener, 321 U. S. 253, 88 L. Ed. 708, 64 S. Ct. 548, rehearing denied in 321 U. S. 754, 88 L. Ed. 1090, 64 S. Ct. 548	19
Holley v. Lawrence, 317 U. S. 518, 87 L. Ed. 434, 63 S. Ct. 394, rehearing denied in 318 U. S. 798, 87 L. Ed. 1162, 63 S. Ct. 531	19
Lawrence v. State Tax Commission, 286 U. S. 276, 76 L. Ed. 1102, 52 S. Ct. 556, 87 ALR 374	19
Abie State Bank v. Bryan, 282 U. S. 765, 75 L. Ed. 690, 51 S. Ct. 252	19
36 Corpus Juris Secundum, Federal Courts, Sec. 267, p. 170	21
Kersh Lake Drainage Dist. of Jefferson, Lincoln, and Desha Counties v. Johnson, 60 S. Ct. 640, 309 U. S. 485, 84 L. Ed. 881, 128 ALR 386	21
Greenough v. Tax Assessors of City of Newport, 67 S. Ct. 1400, 331 U. S. 486, 91 L. Ed. 1621, 172 ALR 329, rehearing denied 68 S. Ct. 28, 332 U. S. 784, 92 L. Ed. 367	21
People of State of Ill., ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County, Ill., 68 S. Ct. 461, 333 U. S. 203, 92 L. Ed. 648, 2 ALR 2d 1338	21

PAGE

Standard Oil Co. v. State of New Jersey by Parsons, N.J., 71 S. Ct. 822, 341 U. S. 428, 95 L. Ed. 1078.. 21

Beauharnais v. People of State of Ill., 72 S. Ct. 725, 343 U. S. 250, 96 L. Ed. 919, rehearing denied 72 S. Ct. 1070, 343 U. S. 988, 96 L. Ed. 1375..... 21

54 American Jurisprudence, United States Courts, Sec. 215, p. 847..... 22

Honeyman v. Hanan, 302 U. S. 375, 82 L. Ed. 312, 58 S. Ct. 273..... 22

54 American Jurisprudence, United States Courts, Sec. 246, p. 886..... 22

Neblett v. Carpenter, 305 U. S. 297, 83 L. Ed. 182, 59 S. Ct. 170, rehearing denied in 305 U. S. 675, 83 L. Ed. 437, 59 S. Ct. 335..... 22

Broad River Power Co. v. State of South Carolina, ex. rel., Daniel, 50 S. Ct. 401, 281 U. S. 537, 74 L. Ed. 1023..... 23

McCoy v. Shaw, 48 S. Ct. 519, 277 U. S. 302, 72 L. Ed. 89..... 23

Reynolds v. Walz, 278 Ky. 309, 128 S. W. 2d 734.... 23

Kendall v. Beiling, 295 Ky. 782, 175 S. W. 2d 489... 23

Forman v. State Board of Health, 157 Ky. 123, 162 S. W. 796..... 23

41 American Jurisprudence, pp. 135, 172..... 23

41 American Jurisprudence, p. 174..... 23

Freeman v. State Medical Examiners, 54 Oklahoma 531, 154 Pac. 56..... 25

41 American Jurisprudence, p. 176..... 25

72 Corpus Juris Secundum, p. 407..... 26

42 American Jurisprudence, p. 323..... 26

Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 84 L. Ed. 656, 60 S. Ct. 437..... 26

Whitten v. California State Board of Optometry, 8 Cal. 2d 444, 65 P. 2d 1296, 115 ALR 1..... 26

Davis on Administrative Law (1951 Ed.), p. 278.... 31

PAGE

N.Y.C.R.R. v. Interstate Commerce Commission, 168 F. 131 32
Dickerson v. L. & N. R. R., 191 F. 705 32
L. & N. R. R. v. Sloss-Shefield Steel & Iron Co., 295 F. 53, affirmed 269 U. S. 217, 70 L. Ed. 242 32
Lewis-Simas Jones Co. v. Southern Pacific 283 U. S. 654, 75 L. Ed. 1333 32
Staley Mfg. Co. v. Fed. Trade Com., 135 F. 2d 453 32
Reinsperg v. Reed, 313 Ky. 683, 233 S. W. 2d 412 . . . 33
Goodrich v. Selligman, 298 Ky. 863, 183 S. W. 2d 625. 33
Jefferson County Planning and Zoning Commission v. Ogden, 307 Ky. 362, 210 S. W. 2d 771 33
Koch, et al. v. Federal Trade Commission, 206 F. 2d 311 35
Hunt's Admix. v. Fuqua, 311 Ky. 497, 224 S. W. 2d 917 36
Miracle v. Harlan Wallins Coal Corp., 311 Ky. 169, 223 S. W. 2d 738 36
Blue Diamond Coal Co. v. Hensley, 314 Ky. 85, 234 S. W. 2d 317 36
Greyhound Corp. v. Steele, 237 S. W. 2d 833 36
70 Corpus Juris Secundum, p. 904 37
Kendall v. Beiling, 295 Ky. 782, 175 S. W. 2d 489 37
Board of Health of Covington v. Kollman, 156 Ky. 351 160 S. W. 1052 37
Jackson v. Commonwealth (Ky.), 249 S. W. 2d 20 . . . 39
International Harvester Co. v. Kentucky, 34 S. Ct. 853, 234 U. S. 216, 58 L. Ed. 1284 40–41
McKay Radio and Telegraph Company v. Federal Communications Commission, 97 F. 2d 641 44
Davis on Administrative Law, pp. 524, 526 44

INDEX TO APPENDICES.

PAGE

A. Opinions 47

A-1 Findings and Order of the Kentucky State Board of Health 47

A-2 Report of the Governor's Commissioner . . . 49

A-3 Decision of the Governor of the Commonwealth of Kentucky 50

A-4 Opinion of the Franklin Circuit Court. 51

A-5 Judgment of the Franklin Circuit Court . . . 52

A-6 Opinion of the Court of Appeals of Kentucky 54

A-7 Decision and Order of the Federal Trade Commission 64

B. Statutes Involved 84

B-1 Section 311.110 (1948 Ed.), Kentucky Revised Statutes 84

B-2 Section 311.120 (1948 Ed.), Kentucky Revised Statutes 85

B-3 Section 311.595(1) (1952 Act), Kentucky Revised Statutes 86

B-4 Section 311.595(4) (1952 Act), Kentucky Revised Statutes 88

B-5 Section 311.555 (1952 Act), Kentucky Revised Statutes 89

B-6 Section 311.615 (1952 Act), Kentucky Revised Statutes 89

B. Miscellaneous 90

C-1 Show Cause Letter 90

IN THE

Supreme Court of the United States

October Term, 1956

No. 1018.

STANLEY G. BANDEEN, - - - - - *Petitioner,*

v.

E. M. HOWARD, J. WATTS STOVALL, BRUCE UNDERWOOD, GEOGRE S. COON, THOMAS P. LEONARD, W. H. FULLER, CARL J. JOHNSON, R. W. ROBERTSON, CLARENCE DAVIS, Individually and Collectively as Constituting the STATE BOARD OF HEALTH OF KENTUCKY, and

JAMES F. QUEENAN, Clerk of the Jefferson County Court, - - - - - - *Respondents.*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Justices of the Supreme Court of the United States:

Respondents, E. M. Howard, *et al.*, who constitute the members of the Kentucky State Board of Health, respectfully request that the Petition for Writ of Certiorari herein be denied upon the grounds hereinafter set forth.

OPINIONS BELOW.

1. The findings and order of the Kentucky State Board of Health appears on page 47 as Appendix A-1.

2. The report of the Governor's commissioner appears on page 49 as Appendix A-2.

3. The decision of the Governor of the Commonwealth of Kentucky appears on page 50 as Appendix A-3.

4. The opinion of the Franklin Circuit Court appears on page 51 as Appendix A-4.

5. The judgment of the Franklin Circuit Court appears on page 52 as Appendix A-5.

6. The opinion of the Court of Appeals of Kentucky is officially reported as 299 S. W. 2d 249 and appears on page 54 as Appendix A-6.

7. The decision and order of the Federal Trade Commission in the matter of Koch Laboratories, Inc., *et al.* (Docket No. 4772), appears on pages 64-83 as Appendix A-7.

The report of the Governor's commissioner, the decision of the Governor of the Commonwealth of Kentucky, and the decision and order of the Federal Trade Commission, referred to above, are not included in the Petition for Writ of Certiorari.

JURISDICTION.

Respondents earnestly contend that the judgment of the Court of Appeals of Kentucky in the case at bar rests on a state jurisdictional ground adequate to sustain it independent of any federal question and, therefore, this Honorable Court is without jurisdiction. It is our contention that a determination by a state's highest court as to the distribution of jurisdiction of the inferior courts of such state is not reviewable by the Supreme Court of the United States. This contention is discussed at length beginning on page 18 of this response.

STATUTES INVOLVED.

The Kentucky Statutes involved in this action are:

1. Section 311.110 (1948 Ed.) of the Kentucky Revised Statutes—Grounds for Suspension or Revocation of Licenses—which appears on page 84 as Appendix B-1.

2. Section 311.120 (1948 Ed.) of the Kentucky Revised Statutes—Hearings on Suspension, Revocation; Appeal to Governor from Action Concerning License—which appears on page 85 as Appendix B-2.

3. Subsection (1) of Section 311.595 (1952 Act) of the Kentucky Revised Statutes—Grounds for Revocation—which appears on page 86 as Appendix B-3.

4. Subsection (4) of Section 311.595 (1952 Act) of the Kentucky Revised Statutes—Authorizing Ap-

peal to Jefferson Circuit Court—which appears on page 88 as Appendix B-4.

5. Section 311.555 (1952 Act) of the Kentucky Revised Statutes—Legislative Purpose Defined—which appears on page 89 as Appendix B-5.

6. Section 311.615 (1952 Act) of the Kentucky Revised Statutes—Continuation of Existing Licenses—which appears on page 89 as Appendix B-6.

Subsection (1) of Section 311.595 (1952 Act), Subsection (4) of Section 311.595 (1952 Act), Section 311.555 (1952 Act), and Section 311.615 (1952 Act), do not appear in the Petition for Writ of Certiorari.

QUESTIONS PRESENTED.

Under this heading, petitioner has listed three questions. The questions as worded by the petitioner, in our opinion, are misleading and do not truly reflect the facts or issues in this case.

The petitioner couches his first question in the following language:

> "Did the State Board of Health of Kentucky have jurisdiction to hear proceedings to revoke the license of Dr. Stanley G. Bandeen to practice osteopathy which had been granted to him by it, without complying with the Statute by furnishing copy of any complaint?"

The respondents consider the wording of this question very misleading and unfair in view of the conclusive evidence that a copy of a complaint was fur-

nished to the petitioner and, in fact, appears in the appendix of the Petition for Writ of Certiorari on page 36. Respondent, therefore, submits that the question should be divided into two parts to read as follows:

(1) Did the State Board of Health of Kentucky have jurisdiction to hear proceedings to revoke the license of Dr. Bandeen to practice osteopathy which had been granted to him by it?

(2) Was Bandeen furnished with an adequate complaint sufficient to apprise him of the charges against him in compliance with the Statute of Kentucky relating thereto?

The petitioner couches his second question in the following language:

> "Can the State Board of Health of Kentucky admittedly consider as evidence, and base its decision at least in part upon, facts not in evidence?"

Actually, the petitioner discusses this contention under the title "Fair and Impartial Hearing," on page 20 of the Petition, and we, therefore, believe this question should read as follows:

> Did the Kentucky State Board of Health deny petitioner a fair and impartial hearing?

The petitioner's third question reads as follows:

> "Is an Order of the State Board of Health of Kentucky revoking a license to practice osteopathy, never affirmed by the Governor while law

in effect, and made without finding any specific facts as basis for such an order, valid and enforceable?"

The wording of this question is most misleading and completely ignores the facts of the case and represents a legal conclusion contrary to that expressed by the Court of Appeals of Kentucky. The Court of Appeals of Kentucky held that the change in the statutory law of Kentucky did not nullify the Board's order of revocation. In our opinion, the question should be divided into two parts to read as follows:

(1) Are the decisions of the highest court of a state, as to the construction and application of its own statutes, binding on the Supreme Court?

(2) Were the findings and order of the State Board of Health legally sufficient?

STATEMENT OF THE CASE.

(1) Proceeding Before the Board.

The Board proceeding against Dr. Bandeen is succinctly stated in the opinion of the Court of Appeals of Kentucky which reads as follows:

"On April 18, 1950, Bandeen received a letter from the secretary of the Board notifying him to 'show cause' within thirty days why his license should not be revoked because of 'grossly unprofessional or dishonest conduct of a character likely to deceive or defraud the public in the treatment

of cancer and tuberculosis.' This proceeding was pitched under KRS 311.110(4), then in force. Bandeen appeared and filed special and general demurrers on the grounds that no complaint had been entered against him and that he had not been furnished with a copy of any complaint that might have been filed against him pursuant to KRS 311.120(1), which was in effect at the time. Thereupon this meeting of the Board was adjourned and thereafter the secretary of the Board, by a communication dated August 4, 1950, notified Bandeen of a hearing to be held before the Board on September 7, 1950, and attached a copy of a complaint setting out certain specific charges. These charges were, briefly stated, using medicines of doubtful value, imposing excessive charges, making unjustified promises of cure and deceiving patients about their physical condition, following unorthodox diagnostic procedures, employing scare tactics, and failing to provide for adequate relief of pain. A list of six patients and their dates of treatment, with reference to whom the charges were made, was appended. This complaint was demurred to on the ground that the notice did not give sufficient information as to the time and place of the treatments as to the parties involved. The demurrer was overruled."

In reviewing the evidence introduced at the Board hearing the Court of Appeals of Kentucky gave the following resumé:

"* * * an exhibit in the record shows Bandeen was listed in the classified ad section of the Louisville telephone directory as a 'Doctor of Medicine'. The secretary of the Board stated that

demands had been repeatedly made upon Bandeen, beginning as far back as 1944, to discontinue this type of listing, but such demands were not acceded to until shortly before the hearing of this case by the Board. Bandeen frankly admitted at the hearing he had no right to advertise as a 'Doctor of Medicine'. * * *

"The label of 'miracle doctor' had become attached to Bandeen in the community where he practiced. He denied he ever referred to himself in such fashion, but he freely conceded he was recognized for his outstanding curative powers and indicated this reputation was justified because of the 'marvelous recoveries' he had effected by the type of treatments he employed. He administered the so-called 'Koch shots' to patients he diagnosed to have cancer. His charges for these shots ranged from $100 to $150. He testified he procured the substance he injected into his patients from an organization or cult known as the Christian Medical Research League of Detroit, Michigan, at a cost of $25 per shot. When one of the Board members inquired whether his charges for the shots were not out of proportion to their cost, he claimed every treatment also included an examination of the 'eyes, ears, nose, throat, heart, lungs, rectum, nerves, teeth, tonsils, etc.' He declared he was aware the 'Koch shots' had been fully investigated by the American Medical Association and had not been recommended by it. He also stated he was virtually the only practitioner in Kentucky who subscribed to this method of treatment.

"One of Bandeen's patients, Mary Frances Rucker, was pronounced by him to have a cancer-

ous tumor, and, according to her husband, Everett Rucker, she grew worse and Bandeen said he could cure her and gave her three 'Koch shots', charging $100 for each. When Bandeen went to see her he made a remark in the presence of both Rucker and his wife that a rubber sheet should be placed under the latter because 'she's going to burst wide open and die right now.' Rucker stated his wife was in great pain and Bandeen did nothing to relieve her He also testified Bandeen's statement so frightened his wife that she 'went crazy as a bedbug' and had to be later confined in the Central State Hospital as a lunatic where she remained about two months. She died some sixteen months later.

"Lue Limp testified Bandeen performed hemorrhoid surgery upon her, charging her $150 for the operation. He told her 'cancer would be her trouble later', and offered to give her a cancer shot for an additional $150. She said this diagnosis induced her to submit to an injection. Subsequently she went to Doctor Henry Asman who operated on her for hemorrhoids and advised her she did not have cancer.

"John Fred Herms, who had been twice operated upon for a cancerous condition in the throat and had been informed he did not have long to live, went to Bandeen for treatment when he heard he was a 'miracle doctor'. Bandeen said he considered Herms' case hopeless. Nevertheless, he administered a shot to Herms. The latter's mother testified that while he was suffering excruciating pains Bandeen gave him some tablets which he enjoined him not to take unless he had 'dying pains'. Herms died five days later.

"Bandeen took the stand and testified in his own behalf and introduced only one witness, his office nurse. The tenor of his testimony, as a whole, was to justify his curative methods.

"Uncontroverted testimony was developed to the effect that Bandeen had paid for a listing in the Louisville telephone directory as a 'Doctor of Medicine', although he did not have this professional status, and had in 1944, and several times thereafter, been warned by the Board to have the listing removed, which warning he ignored until this proceeding was begun. He also gave the so-called 'Koch shots' for cancer treatments, with knowledge that after investigation the American Medical Association had branded the use of such a substance valueless therapeutically. It was brought out that Bandeen charged $100 to $150 for each 'Koch shot' while the cost of each shot was only $25. He gave conflicting testimony as to what the services for each charge involved. It was stated Bandeen refused to relieve pain on two occasions and employed methods that terrorized on another. All this was denied by him. There was proof that Bandeen claimed in several instances that 'Koch shots' would cure cancer. He refuted this testimony in part."

The opinion also correctly states that "on December 13, 1951, upon the basis of the evidence recited, the Board found that Bandeen 'while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of KRS 311.110(4).'"

(2) Proceedings Before the Governor.

Section 311.120(3) of the Kentucky Revised Statutes, before its repeal effective June 19, 1952, provided that a licensee whose license had been revoked by the Board may appeal to the Governor who may affirm or overrule the decision of the Board. Bandeen appealed to the Governor after the Board entered its order on December 13, 1951. While the matter was pending before the Governor, the General Assembly of Kentucky, at its 1952 session, passed a comprehensive act relating to physicians and osteopaths which became effective June 19, 1952, and which repealed Section 311.120(3) as well as the other provisions of the Medical Practice Act of 1904. By Section 311.595(1) of the 1952 Act, the Board retained its authority to revoke licenses on an expanded number of grounds and these included the four grounds listed under the repealed statute. The new enactment deleted the right of an appeal to the Governor set forth in KRS 311.120(3), a part of the old Act and provided that review of orders of the Board shall be by appeal to the *Jefferson Circuit Court*.

Bandeen, however, continued to prosecute his appeal to the Governor even though the 1952 Act abolished such administrative appeals. The Governor of Kentucky, at the time, the Honorable Lawrence Wetherby, appointed Honorable Marion Rider, a prominent member of the Franklin County Bar, to hear and consider the appeal and render a report with recommendations.

Counsel for Bandeen appeared before Commissioner Rider on July 8, 1952, and again on July 10, 1952, and argued Bandeen's appeal to the Governor. At no time did Bandeen's counsel claim or even suggest or infer that the Act that became effective on June 19, 1952, invalidated the Board's order of revocation. On the contrary, he based his argument entirely upon the law in effect prior to the effective date of the 1952 Act.

In a brief, filed with Commissioner Rider by Bandeen's counsel on July 8 or 10, 1952 (which is subsequent to the effective date of the 1952 Act), it is stated in part (italics ours):

> "This action is pending on appeal from an order of the State Board of Health. This appeal is taken pursuant to Section 311.120(3) Kentucky Revised Statutes. That section has controlled the hearings in proceedings for suspension or revocation. It provides in all cases of suspension or revocation, the right of appeal to the Governor, *who is given by that Statute the authority to affirm or overrule.*
>
> "The Order in this case was entered on December 13, 1951, to become effective on December 30, 1951, unless appealed to the Governor, and if appealed to stand suspended *pending decision by the Governor.*
>
> "Dr. Bandeen contends that the State Board of Health had no authority to hold the proceedings involving him, or to make the Order which the Board entered on December 13, 1951. This is *not* based on lack of statutory authority, but on failure

to follow the required procedure under the Kentucky Statutes."

In a brief, filed with Commissioner Rider by Bandeen's counsel on July 24, 1952 (which is subsequent to the effective date of the 1952 Act), it is stated in part (italics employed for emphasis):

> "A proceeding against Dr. Stanley G. Bandeen was instituted before the State Board of Health of Kentucky. The proceeding resulted in the State Board entering an order for revocation of Dr. Bandeen's license to practice osteopathy.
>
> "The Statute under which the proceeding was instituted gave the right of appeal to the Governor. The Order of the Board was appealed within the time allowed. So the case is now before the Governor and his Commissioner in chief.
>
> "As we understand, *the law places no limitation on the Governor's review of an order of the State Board. The appeal leaves to him a decision on both law and facts.*"

Thus it is clear that Bandeen and his counsel at no time took any steps to dismiss or abandon the administrative appeal to the Governor but, on the contrary, consistently contended that Bandeen was entitled to have the appeal decided by the Governor under the law that was in effect at the time the appeal was taken.

Under date of January 14, 1953, Commissioner Rider reported to Governor Wetherby that the evidence supported the Board's order of license revocation and that it should be affirmed. (See Appendix A-2 which appears on page 49.)

Under date of March 11, 1953, the Honorable Lawrence W. Wetherby, as Governor of Kentucky, adopted the report of Commissioner Rider and affirmed the Board's order of license revocation. (See Appendix A-3 which appears on page 50.)

(3) Proceedings in the Franklin Circuit Court.

Shortly after the newspaper announcement of the decision of the Governor affirming the Board's order of license revocation, and before the Board received a copy of the Governor's decision, Bandeen filed a petition in the Franklin Circuit Court seeking to set aside the Board order and Governor Wetherby's affirmance thereof, and seeking to permanently enjoin the Board and the Governor and the County Court Clerk from putting into effect said order of revocation. An answer was filed, after which Bandeen filed a reply which was controverted of record. The Franklin Circuit Court, on January 20, 1954, overruled Bandeen's demurrer and motion to strike, and entered a judgment finally dismissing his petition, and setting aside and vacating the temporary restraining order previously issued by the clerk. However, for the purpose of preserving the *status quo* pending Bandeen's appeal to the Court of Appeals, the Franklin Circuit Court, over the Board's objections, granted an injunction pending said appeal.

It is interesting to note that Bandeen diligently and vigorously prosecuted his administrative appeal to the Governor under the previous Act (KRS 311.120(3), 1948 Edition) even after the effective date of the Ken-

tucky Medical and Osteopathic Practice Act of 1952 and did not claim that this latter act invalidated or affected the previous statute until after the Governor had affirmed the Board's findings and order. It is also interesting to note that although Bandeen alleges in substance, in his petition in the Franklin Circuit Court, that the 1952 Act superseded the statutes in effect at the time of the Board's order of license revocation and at the time of his appeal to the Governor therefrom, he overlooked the fact that the 1952 Act provided that judicial review of orders of the Board shall be by appeal to the *Jefferson Circuit Court.* (See Subsection (4) of Section 311.595 (1952 Act) which appears on page 88 as Appendix B-4.)

It is clear that Bandeen's suit in the Franklin Circuit Court was a frantic effort on his part to attempt to defeat enforcement of the Board order of license revocation, by such assertions and arguments that might appear expedient without too much regard for their consistency, logic or accuracy.

(4) Proceedings in the Court of Appeals of Kentucky.

On October 5, 1956, the Court of Appeals of Kentucky handed down a decision affirming the action of the State Board of Health in revoking Dr. Bandeen's license to practice osteopathy. The opinion was written by the Honorable Brady M. Stewart, Associate Justice of the Court and former Chief Justice. The opinion very meticulously discussed each and every contention advanced by Dr. Bandeen and held, among

other things, that Bandeen made a fatal jurisdictional error in appealing to the Franklin Circuit Court instead of the Jefferson Circuit Court which was the only court having jurisdiction. Dr. Bandeen then petitioned the Court of Appeals of Kentucky for a rehearing and on February 22, 1957, the Court denied his request for a rehearing.

(5) Exceptions to Statements of Fact and Inferences in Petition.

Respondents would like to point out to the Court that we take sharp exception to the statements and inferences in the petition to the effect that: Dr. Bandeen is an M.D.; that he has been issued a license to practice medicine by the Board; and that he was never furnished with a copy of the Board's complaint.

(A) BANDEEN IS NOT AN M.D.

The Court of Appeals opinion correctly points out that Bandeen "admitted that he did not hold the degree of Doctor of Medicine; that he had no right to use the professional title of 'Doctor of Medicine' or its abbreviation, 'M.D.'; and that he was not entitled to engage in the general practice of medicine * * *."

On page 112 of the transcript of evidence, Bandeen was asked: "Do you have a Doctor of Medicine degree?" Answer: "I do not."

If Bandeen has an "M.D." degree as is inferred by his petition, then he did not testify truthfully at the Board proceeding. It is significant also that Ban-

deen's name nowhere appears in the American Medical Association Directory as an "M.D.".

(B) BANDEEN WAS NEVER ISSUED A LICENSE TO PRACTICE MEDICINE BY THE BOARD.

Respondents likewise object to the inference in the petition that Bandeen was issued a license to practice medicine by the Board. Prior to 1932, osteopaths in Kentucky were not permitted to administer drugs, but in that year the Board authorized such by osteopaths provided they passed an examination conducted by the Board. Bandeen took such an examination and passed and was, therefore, authorized to administer drugs but he was never issued a license to practice medicine by the Board. His osteopathic license was merely changed to permit him to administer drugs. The Kentucky State Board of Health has never in its history issued a license to practice medicine to an applicant upon the basis of an osteopathic diploma. Osteopathic school graduates are eligible for licenses to practice osteopathy only. It is important to note that the hospitals in Kentucky do not afford hospital privileges to osteopaths. The public is certainly entitled to know to which branch of the healing arts a practitioner belongs.

(C) BANDEEN RECEIVED A COPY OF THE BOARD'S COMPLAINT.

Respondents likewise object to the inference in the petition that Bandeen did not receive a copy of a complaint. The evidence is conclusive that he did and, in fact, a copy appears on page 36 as Appendix B-4 of his Petition.

ARGUMENT.

(1) The Case at Bar Rests on a State Jurisdictional Ground Adequate to Sustain It Independent of Any Federal Question and Therefore This Honorable Court Is Without Jurisdiction.

It is essential to the jurisdiction of this Honorable Court on a petition for writ of certiorari to a state court that it appear affirmatively from the record, not only that a federal question was presented for decision in the state court but also that the state court's decision of the federal question was necessary to the determination of the cause and that the question as rendered could not have been made without deciding it.

McGoldrick v. *Gulf Oil Corp.*, 309 U. S. 2, 84 L. Ed. 536, 60 S. Ct. 375, vacated on rehearing in 309 U. S. 692, 84 L. Ed. 1034, 60 S. Ct. 512.
Lynch v. *New York*, 293 U. S. 52, 79 L. Ed. 191, 55 S. Ct. 16.
54 Am. Jur., Sec. 263, p. 901.

It is also well settled that a judgment of a state court, resting on grounds adequate to sustain it, independent of any federal question, is not reviewable even though the state court actually decided a federal question adversely to the party by whom the review is sought.

Petrie v. *Nampa & Meridian Irrigation Dist.*, 39 S. Ct. 25, 248 U. S. 154; 63 L. Ed. 178.
36 CJS, Federal Courts, Sec. 244, pp. 150, 151.
State Tax Commissioner of Utah v. *Van Cott*, 59 S. Ct. 605, 306 U. S. 511, 83 L. Ed. 950.

In 54 Am. Jur., United States Courts, Sec. 215, p. 847, it is stated:

> "Where a Federal question is present in the case, it is incumbent on the court, when it is urged that the decision of the state court rests upon a non-Federal ground, to ascertain for itself whether the asserted non-Federal ground independently and adequately supports the judgment. If it does, the appeal will be dismissed, especially where the disposition of such question might terminate the entire controversy and make it unnecessary to decide a substantial constitutional question."

See also:

Flournoy v. *Wiener,* 321 U. S. 253, 88 L. Ed. 708, 64 S. Ct. 548, rehearing denied in 321 U. S. 754, 88 L. Ed. 1090, 64 S. Ct. 548.

Holley v. *Lawrence,* 317 U. S. 518, 87 L. Ed. 434, 63 S. Ct. 394, rehearing denied in 318 U. S. 798, 87 L. Ed. 1162, 63 S. Ct. 531.

Lawrence v. *State Tax Commission,* 286 U. S. 276, 76 L. Ed. 1102, 52 S. Ct. 556, 87 A. L. R. 374.

Abie State Bank v. *Bryan,* 282 U. S. 765, 75 L. Ed. 690, 51 S. Ct. 252.

Respondents contend that the judgment of the Court of Appeals of Kentucky rests on grounds adequate to sustain it independent of any federal question and, therefore, this Court should refuse jurisdiction. This contention is based upon that part of the Court of Appeals of Kentucky opinion which states that the Jefferson Circuit Court was the only body with jurisdiction to hear Bandeen's appeal. The pertinent part

of the Court of Appeals opinion reads as follows (emphasis added):

> "Bandeen earnestly insists that the Board's order was voided while his appeal was pending before the Governor, since KRS 311.120(3) (1948 Ed.) was repealed without a saving clause. We do not agree. The simultaneous repeal and the reenactment of substantially the same statute, or of portions of it, do not at common law work a repeal of the former act, but the substituted statute is construed as a continuation of the original provisions. *Jones* v. *Kentucky State Board of Dental Examiners,* 291 Ky. 136, 163 S. W. 2d 297. *The jurisdiction of the Board was not disturbed, and the appellate jurisdiction was simply transferred from the Governor to the Jefferson Circuit Court.* Since the new legislation did not impair the previously existing right, nor deny a remedy for its enforcement, but only modified the proceedings while providing a similar remedy, the jurisdiction continues under the forms directed by the repealing act, in so far as the two acts differ. *Kingan & Co.* v. *Ossam,* 75 Ind. 548, 121 N. E. 289.
>
> "It would seem that, upon repeal of the section conferring jurisdiction upon the Governor to pass upon an appeal of this kind, *Bandeen should have appealed to the Jefferson Circuit Court, the only body with jurisdiction to hear the appeal under the existing law, and that, failing to follow this designated procedural step, he should be denied injunctive relief for this reason also.*"

It is well settled that a determination of a state's highest court as to the jurisdiction of the inferior

courts of the state is now reviewable by the United States Supreme Court.

36 CJS, Federal Courts, Sec. 267, p. 170.

Kersh Lake Drainage Dist. of Jefferson, Lincoln and Desha Counties v. *Johnson*, 60 S. Ct. 640, 309 U. S. 485, 84 L. Ed. 881, 128 A. L. R. 386.

Greenough v. *Tax Assessors of City of Newport*, 67 S. Ct. 1400, 331 U. S. 486, 91 L. Ed. 1621, 172 A. L. R. 329, rehearing denied 68 S. Ct. 28, 332 U. S. 784, 92 L. Ed. 367.

People of State of Ill., ex rel. McCollum v. *Board of Education of School Dist. No. 71, Champaign County, Ill.*, 68 S. Ct. 461, 333 U. S. 203, 92 L. Ed. 648, 2 A. L. R. 2d 1338.

Standard Oil Co. v. *State of New Jersey by Parsons, N. J.*, 71 S. Ct. 822, 341 U. S. 428, 95 L. Ed. 1078.

Beauharnais v. *People of State of Ill.*, 72 S. Ct. 725, 343 U. S. 250, 96 L. Ed. 919, rehearing denied 72 S. Ct. 1070, 343 U. S. 988, 96 L. Ed. 1375.

In *Petrie, et al.* v. *Nampa & Meridian Irrigation Dist.*, 39 S. Ct. 25, 248 U. S. 154, 63 L. Ed. 178, the Supreme Court of the United States, after discussing a federal question decided by a state court, said: "We cannot doubt that this conclusion of the state supreme court, based as it is wholly on state statutes and procedure, is broad enough to sustain the judgment rendered, irrespective of the disposition of any federal question involved, and therefore, the writ of error will be dismissed."

In 54 Am. Jur., United States Courts, Sec. 215, p. 847, it is stated that "the Court (meaning the Supreme Court of the United States) will not consider questions relating to the distribution of jurisdiction in the state courts; * * *." (See also *Honeyman* v. *Hanan,* 302 U. S. 375, 82 L. Ed. 312, 58 S. Ct. 273.)

In 54 Am. Jur., United States Courts, Sec. 246, p. 886, it is stated that "The United States Supreme Court is without jurisdiction on certiorari to review holdings of the state court which concern matters of state law and amount at most to alleged erroneous construction of statutes of a state by its own courts." (See also *Neblett* v. *Carpenter,* 305 U. S. 297, 83 L. Ed. 182, 59 S. Ct. 170, rehearing denied in 305 U. S. 675, 83 L. Ed. 437, 59 S. Ct. 335.)

That part of the opinion of the Court of Appeals of Kentucky which holds that Bandeen failed to appeal his case to the only circuit court in Kentucky having jurisdiction of the cause was an adequate non-federal reason sufficient to sustain the decision of the Court of Appeals independent of any federal question. If this Honorable Court agrees with our contention, then it is unnecessary to consider any of the questions raised by Bandeen because the whole case has been resolved. It should be carefully noted, however, that there was no attempt by the Court of Appeals of Kentucky to evade any federal question but, on the contrary, as is evidenced by the written opinion, they fully considered and ruled upon every contention advanced by Bandeen. Where there is no attempt to evade a federal question

by a state court, its decision on the independent non-federal ground will not be reviewed.

Broad River Power Co. v. *State of South Carolina, ex rel. Daniel,* 50 S. Ct. 401, 281 U. S. 537, 74 L. Ed. 1023.

McCoy v. *Shaw,* 48 S. Ct. 519, 277 U. S. 302, 72 L. Ed. 89.

(2) The State Board of Health of Kentucky Had Jurisdiction to Hear Proceedings to Revoke the License of Dr. Bandeen to Practice Osteopathy.

(A) LICENSES TO PRACTICE HEALING ARTS ARE REVOCABLE.

It is elemental that the right to practice a healing art, such as medicine, osteopathy, optometry, dentistry, etc., is not inherent, and that a license therefor is not a contract and does not confer upon the holder a right to engage in the practice unrestricted. It is also elemental that a state may, in the exercise of its police power, refuse to grant such a license or revoke one already issued.

Reynolds v. *Walz,* 278 Ky. 309, 128 S. W. 2d 734.
Kendall v. *Beiling,* 295 Ky. 782, 175 S. W. 2d 489.
Forman v. *State Board of Health,* 157 Ky. 123, 162 S. W. 796.
41 Am. Jur., pp. 135, 172.

(B) GROSSLY UNPROFESSIONAL OR DISHONORABLE CONDUCT OF A CHARACTER LIKELY TO DECEIVE OR DEFRAUD THE PUBLIC CONSTITUTES VALID GROUNDS FOR LICENSE REVOCATION.

In 41 American Jurisprudence, at page 175, it is stated as follows:

> "No other ground for revocation is invoked as frequently, perhaps, as 'unprofessional', 'dishonorable', or 'immoral' conduct in connection with the practice of medicine or the particular branch or system thereof in which the licensee in question is engaged. Such conduct is specified as grounds for revocation in many of the statutes, and, as appears above, the validity of such statutes has been sustained by the courts in almost every instance. The quoted words, and other similar ones which are sometimes used in the statutes, are words of general rather than exact and definite significance."

As far back as 1914, the Court of Appeals of Kentucky in the case of *Forman* v. *State Board of Health*, 157 Ky. 123, 162 S. W. 796, sustained the validity of an Act of 1904 that authorized the Board to revoke licenses on the grounds stated therein which included, *inter alia*, grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public (KRS 311.110(4), 1948 Ed.). In that case the Court, in holding valid the 1904 Act, stated that the Board possessed authority to revoke a medical license on the ground of grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, where the licensee engages in false and deceptive advertising that he can effect cures. The Court said, in pertinent part, as follows:

"The physician who advertises that he can cure a certain disease by a new method may be perfectly sincere in believing that he can do so. On the other hand, the quack and charlaton who frequently advertise that they can effect cures, when they know the advertisement to be false, and thus defraud and deceive the public, are guilty of fraudulent, dishonorable, and unprofessional conduct involving moral turpitude. *Whether the physician's acts were sincere or fraudulent and done for the purpose of defrauding the public is a question to be decided by the board on all the facts.*"

Of course, such unprofessional or dishonorable conduct as to authorize license revocation may consist of conduct other than false advertising. In 41 American Jurisprudence at page 176, it is said that "Various acts and conduct have been held by the courts to constitute unprofessional, immoral, or dishonorable conduct in connection with the practice of medicine sufficient to constitute grounds for revocation of a practitioner's license. In the case of *Freeman* v. *State Medical Examiners,* 54 Okla. 531, 154 Pac. 56, it was held that the acceptance of money upon the assurance or representation of being able to cure a disease regarded by the concensus of medical opinion as being incurable, constitutes unprofessional and dishonorable conduct warranting license revocation.

(C) THE BOARD POSSESSED AUTHORITY TO INITIATE THE PROCEEDING.

Nothing in the statutes in effect in 1950 (KRS 311.110 and 311.120, 1948 Ed.) prohibited the Board from initiating a revocation proceeding upon the basis of information received by the Board or by any member thereof.

It is firmly established that in the absence of express statutory prohibitions, an administrative agency may initiate investigations and proceedings upon its own motion or complaint. 72 Corpus Juris Secundum, page 407. In 42 American Jurisprudence at page 323, it is stated as follows:

> "In fact, the power and facilities of administrative agencies to investigate, initiate action, and control the range of investigation is one of the distinctive functions which sets them apart from the courts."
>
> *Federal Communications Commissions* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 84 L. Ed. 656, 60 S. Ct. 437.
>
> *Whitten* v. *California State Board of Optometry*, 8 Cal. 2d 444, 65 P. 2d 1296, 115 A. L. R. 1.

The Board would indeed be a pusillanimous guardian of the public health if its functions were limited to merely umpiring controversies between licentiates of the Board and other individuals. Due regard for the spirit and purpose of the Act lodging in a competent body of professional men the power to regulate and control the practice of certain healing arts, nega-

tives any contention that the Board did not have the authority and duty to take affirmative action upon its own initiative in the public interest.

(D) NOTICE OF THE HEARING WAS ADEQUATE.

On or about April 17, 1950, the State Board of Health, acting through Bruce Underwood, M. D., its secretary, notified the petitioner in writing to appear before the Board on May 18, 1950, to show cause why his license to practice osteopathy in the Commonwealth of Kentucky should not be revoked because of grossly unprofessional and dishonorable conduct of a character likely to deceive and defraud the public. (A copy of this first notice appears on page 90 as Appendix C-1.)

The petitioner personally appeared before the Board on May 18, 1950, with his attorney, Blakey Helm, who thereupon filed a special demurrer and a motion for a copy of the complaint. On the same date, the Board, by action reflected in the official minutes of its meeting held on May 18, 1950, overruled the special demurrer *but sustained the motion for a copy of the complaint and indefinitely continued the case without hearing any evidence at that time.*

Thereafter, on August 4, 1950, the Board, acting through Bruce Underwood, M. D., its secretary, notified the petitioner in writing that the hearing had been set for 10 A.M. on September 7, 1950, at the offices of the Board at 620 South Third Street, Louisville, Kentucky, and furnished to the petitioner, as an attachment to said written notice, a copy of the complaint containing a statement of general and specific charges. For

the convenience of the Court, the Board's "Notice" and "Copy of Complaint" referred to above are set out below.

"August 4, 1950

"Stanley G. Bandeen, D.O.
Fincastle Building
Louisville 2, Kentucky

"Dear Doctor Bandeen:

"Pursuant to an agreement reached with your attorney, Honorable J. Blakey Helm, at your hearing in Frankfort on May 18, 1950, and pursuant to the provision of Chapter 311 of the Kentucky Revised Statutes, you are hereby cited to appear for a hearing before the State Board of Health in the offices of the Board at 620 South Third Street, Louisville, Kentucky, at 10:00 A.M. Central Daylight Saving Time, on Thursday, September 7, 1950, to show cause why your license to practice osteopathy in the State of Kentucky should not be suspended or revoked because of the charges which are outlined in the copy of the complaint which is attached hereto.

"You may appear in person or by counsel or both, as you may choose. If you are unable to attend the hearing, you must present satisfactory, substantiating evidence to the State Board of Health or make some other arrangement satisfactory to the Board.

Respectfully,

Bruce Underwood, M. D.
Secretary

BU/bh
Encl.
Via—Registered Mail"

"COPY OF COMPLAINT

"1. General Charge

"The general charge is that of 'grossly unprofessional or dishonorable conduct' of a character likely to deceive or defraud the public' as provided in Subsection (4) of Section 311.110 of the Kentucky Revised Statutes.

"2. Specific Charges

"The specific charges are as follows:

a. Defrauding the public with excessive charges.

b. The use of medicine of doubtful value; deceiving the patient with claims which are unjustified.

c. The failure to follow accepted diagnostic procedures prior to treatment.

d. Defrauding the public by intimidation of patients with scare tactics.

e. Defraud and deceiving the patients with unjustified promises of cure.

f. Statements made to patients which are likely to deceive them with relation to their physical condition.

g. The failure to provide for adequate relief of pain to the patient.

h. The prescription of diets which are contrary to accepted principles.

"The specific charges above outlined refer to the following patients:

1. Mrs. Lucinda Limp, Salem, Indiana, who was treated on or about April, 1950.

2. Mr. J. Fred Herms (deceased), of Louisville, Kentucky, who was treated on or about February or March, 1950.
3. Mrs. Mary Frances Rucker of North Pleasureville in Henry County, treated sometime during 1943.
4. Mrs. A. E. Brooks of Shelby County, treated during 1937.
5. Mr. and Mrs. Williams, Waddy, Kentucky, treated during 1937.
6. Mrs. Sam Melton, Hopkins County, treated during February or March, 1950."

It is important to note that the general charge of "grossly unprofessional conduct of a character likely to deceive or defraud the public" in the complaint was couched in the exact language of Subsection (4) of Section 311.110 of the Kentucky Revised Statutes. (See Appendix B-1 on page 84.)

Subsection (1) of Section 311.120 of the Kentucky Revised Statutes (1948 Ed.), in effect in 1950 at the time of the institution of the Board's action against Dr. Bandeen, reads as follows:

> "(1) In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing. He may be heard in person and by counsel. The board may take oral or written proof for and against the complaint as it considers will best present the facts."

Nothing contained in this statute or any other statute required that a complaint against a licensee be prepared in any particular form or that it be signed by any particular person or at all. However, it is apparent that the signing of the notice of hearing by the secretary was tantamount to the signing of the complaint also, inasmuch as the complaint was incorporated by reference into the notice of hearing. Both documents were enclosed in the same sealed envelope.

The manifest intent of the proviso that in every revocation proceeding the holder of the license shall be furnished with a copy of the complaint and given at least 30 days thereafter to prepare for the hearing, was to require that at least 30 days prior to the hearing the licensee be notified of the alleged acts and conduct which, if proved, would constitute grounds for license revocation.

In Davis on Administrative Law (1951 Ed.), page 278, *et seq.*, it is said:

> "The key to pleading in the administrative process is adequate opportunity to prepare. When an original notice or pleading is inadequate, it is normally supplemented by informal communication, by formal amendment, by a bill of particulars, by pre-hearing conferences, or by ample continuance at the hearing. And the question on review is not the adequacy of the original notice or pleading but is fairness of the whole procedure * * *. One who is given inadequate notice is not prejudiced when long enough before the hearing the particulars are furnished informally."

In *N. Y. C. R. R.* v. *Interstate Commerce Commission*, 168 F. 131, it was said:

> "The Interstate Commerce Commission is an administrative tribunal dealing with practical problems. So long as parties affected by its orders appear and are fully heard, we think it would be most unfortunate to deny its power to grant such relief as the facts shown upon the investigation should call for, even though such facts might be outside the issues raised * * *. The strict rules of pleading should not be applicable to it."

In accord:

Dickerson v. *L. & N. R. R.*, 191 F. 705.
L. & N. R. R. v. *Sloss-Sheffield Steel & Iron Co.*, 295 F. 53, affirmed 269 U. S. 217, 70 L. Ed. 242.
Lewis-Simas Jones Co. v. *Southern Pacific*, 283 U. S. 654, 75 L. Ed. 1333.
Staley Mfg. Co. v. *Fed. Trade Com.*, 135 F. 2d 453.

Detailed notice was given to Bandeen substantially more than 30 days before the hearing that was conducted at Louisville on September 7, 1950. This notice set out the charges, the specifications, and the names and addresses of particular persons involved. Both Bandeen and his counsel were present at the hearing and participated therein, and neither requested a continuance or postponement thereof.

(3) Bandeen Was Afforded a Fair and Impartial Trial.

Wide discretion is granted to administrative agencies in conducting hearings. *Reinsperg* v. *Reed,* 313 Ky. 683, 233 S. W. 2d 412. Proceedings before administrative agencies may be informal; wide latitude in the manner of presenting evidence should be afforded, and technical rules of procedure should not be enforced. *Goodrich* v. *Selligman,* 298 Ky. 863, 183 S. W. 2d 625. Proceedings before an administrative agency carry a presumption of fairness and correctness. *Jefferson County Planning and Zoning Commission* v. *Ogden,* 307 Ky. 362, 210 S. W. 2d 771.

The Board was eminently fair to Bandeen and his counsel, as evidenced by the many concessions and courtesies extended to both of them. Neither Bandeen nor his counsel can seriously contend that they were not fully heard by the Board, by the Governor's Commissioner, by the Franklin Circuit Court, and twice by the Court of Appeals of Kentucky. They have not had merely their "day in court". They have had almost seven years in court.

Despite Bandeen's denial of some of the testimony of some of the witnesses, the Board saw and heard Mr. Rucker, Mr. and Mrs. Limp, and Mrs. Herms, and of course took into consideration their demeanor and motives as well as their testimony. There is no indication that any of those witnesses were inspired or prompted by evil motives to testify against Bandeen. On the contrary, there is every indication that they were motivated by a desire to be of public service by

relating their experiences with Bandeen. It appears from the record that their testimony was candid and frank and that Bandeen's testimony was evasive and, in some instances, duplicitious.

Needless to say, the Board would have been intrigued to listen to evidence of any cancer cures effected by Bandeen. The hearing presented to Bandeen an opportunity to introduce patients and former patients to testify as to his claimed wonders of the Koch Cancer Treatment and also as to the marvelous results he claimed to have achieved with the use of this concoction. But the only witness produced by Bandeen was Mrs. Richardson, his office nurse, who testified concerning some office treatments that he gave to Mrs. Limp and Mr. Herms.

Bandeen testified that so far as he knew only one other person in the entire State of Kentucky was using the Koch Cancer Treatment (Board Proceedings, p. 129). He also stated that he was aware that the Koch Cancer Treatment had been condemned by the American Medical Association (Board Proceedings, p. 129).

No doubt this Court is curious about the details of the Koch Cancer Treatment. A lengthy and detailed discussion thereof is contained in a decision of the Federal Trade Commission issued on August 23, 1951, as the result of a proceeding by that agency against the Koch Laboratories, *et al.* (Docket No. 2772), that involved a lengthy and expensive hearing at which exhaustive testimony was taken from numerous persons. For the convenience of the Court, a copy of findings,

decision and order of the Federal Trade Commission in that case is incorporated in the Appendix hereto. (See Appendix A-7 on page 64 of this brief.) It will be observed from a reading thereof that the Federal Trade Commission found that the so-called Koch Cancer Treatment has no therapeutic value but, on the contrary, has adverse effects on some patients, and that the advertising material relating thereto was false and deceptive; also that the Commission order that the Kochs cease and desist from disseminating by mail or by interstate commerce any advertisement claiming that it constitutes adequate treatment for cancer or *"that any of said preparations possess therapeutic value or that their use will be of benefit in the treatment of any disease of the human body or in animals."* That decision was referred to in briefs filed with the Board; and a copy thereof was filed in the Franklin Circuit Court as Exhibit A to the answer and as an appendix of the brief filed with the Court of Appeals of Kentucky.

The decision of the Federal Trade Commission, referred to above, was *affirmed* by the Sixth United States Court of Appeals on July 8, 1953. *Koch, et al.* v. *Federal Trade Commission,* 206 F. 2d 311.

The hearing before the Federal Trade Commission in the matter of Koch Laboratories, Inc., was begun before the Board's action against Dr. Bandeen was instituted and a decision was entered by the Federal Trade Commission prior to the Board's order of revocation of Dr. Bandeen's license. The hearing before the Federal Trade Commission involving Koch Labora-

tories was a very elaborate and expensive affair. The cease and desist order of the Federal Trade Commission was issued on August 24, 1951. The "Findings and Order" of the State Board of Health were issued on December 13, 1951.

An administrative agency acting in a judicial or *quasi*-judicial capacity may, like the judge of an ordinary court, take judicial notice of matters of common knowledge and, in addition, may also act upon its specialized knowledge acquired through official experience in agency work. The State Board of Health is charged by law with the protection of the public health. In addition to being charged with the enforcement of the Medical and Osteopathic Practice Act of Kentucky, it is also charged with the enforcement of the state food and drug laws. The Board undoubtedly may take judicial notice of a cease and desist order of the Federal Trade Commission involving any food or drug preparation.

The opinion of the Court of Appeals of Kentucky properly states that the Federal Trade Commission's opinion was a finding of law and not one of fact, hence, the Board could take judicial notice of it.

Findings of an administrative board are conclusive if supported by any substantial evidence.

Hunt s Admix. v. *Fuqua*, 311 Ky. 497, 224 S. W. 2d 917.

Miracle v. *Harlan Wallins Coal Corp.*, 311 Ky. 169, 223 S. W. 2d 738.

Blue Diamond Coal Co. v. *Hensley*, 314 Ky. 85, 234 S. W. 2d 317.

Greyhound Corp. v. *Steele*, 237 S. W. 2d 833.

At 70 Corpus Juris Secundum, page 904, it is said:

> "While a determination by the board that certain conduct constitutes unprofessional conduct is not binding on the court, the decision of the board on questions of fact at least, will be given very high consideration; and, generally speaking, the findings of the board should not be disturbed where it had jurisdiction and acted honestly and impartially, and not arbitrarily, or, as sometimes said, in the absence of fraud, corruption or oppression."

In *Kendall* v. *Beiling,* 295 Ky. 782, 175 S. W. 2d 489, the Court said, in sustaining an order of the Board revoking a license to practice optometry, that "due regard for the spirit and purpose of the statute in lodging the primary power in a competent board of the medical profession will be observed, and their decision upon questions of fact will be given very high consideration."

In *Board of Health of Covington* v. *Kollman,* 156 Ky. 351, 160 S. W. 1052, the Court said that: "Being the agency created by the legislature * * * the presumption is always in favor of the board of health and it will not be interfered with unless it appears unreasonable or oppressive."

(4) The Decision of the Court of Appeals of Kentucky as to the Construction and Application of Its Own Statutes Is Binding Upon the Supreme Court of the United States.

(A) THE MEDICAL AND OSTEOPATHIC PRACTICE ACT OF 1952 DID NOT INVALIDATE THE BOARD'S ORDER OF LICENSE REVOCATION.

Prior to June 19, 1952 (the effective date of the Medical and Osteopathic Practice Act of 1952), a licensee whose license had been revoked by the Board was permitted to appeal to the Governor who was authorized to affirm or overrule the decision of the Board. Bandeen appealed to the Governor after the Board entered its order on December 13, 1951. By Section 311.595(1) of the 1952 Act, the State Board of Health retained its authority to revoke licenses on an expanded number of grounds including the four grounds listed under the repealed statute. The new Act deleted the right of an appeal to the Governor set forth in Section 311.120(3) of the old Act, and provided that appeals from the Board shall be prosecuted through the *Jefferson Circuit Court*. It is important to note that the administrative appeal to the Governor authorized by the 1904 Act (KRS 311.120(3), 1948 Ed.) provided that a licensee whose license was revoked by the Board "may" appeal to the Governor and that the Governor "may" affirm or overrule the decision of the Board. The administrative appeal, therefore, was optional and it did not constitute a part of the Board's revocation procedure. The Board was the license revoking authority. Its action was completed. The Governor had

no authority to revoke a license. His authority on appeal to him was limited to merely affirming or overruling the Board's order of revocation (KRS 311.120(3), 1948 Ed.). Bandeen's appeal to the Governor was based upon the Board's order of revocation. It was a final order of the Board, otherwise it would not have been appealable.

The Board's order dated December 13, 1951, expressly provides that it *"hereby absolutely revokes* any and all licenses heretofore issued by said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky." The language that followed, fixed a definite time ("midnight on December 30, 1951") as the effective date of license revocation, and provided for a stay of enforcement of the order pending decision by the Governor on an appeal taken by Bandeen to him prior to December 30, 1951.

In the case of *Jackson* v. *Commonwealth* (Ky.), 249 S. W. 2d 20, it was argued that because a sentence was probated there had been no conviction. However, the Court of Appeals of Kentucky expressed the view that probation of a person convicted in a criminal proceeding merely suspended the judgment.

In the instant case, the Board's order of revocation was stayed or suspended during the pendency of Bandeen's appeal and became of full force and effect upon its affirmance.

The case at bar involves the construction of several state statutes. In the case of *International Harvester*

Co. v. *Kentucky,* 34 S. Ct. 853, 234 U. S. 216, 58 L. Ed. 1284, this Court held that the meaning derived by the highest state court by construing together several state statutes is as conclusive on the federal Supreme Court as though such legislation were embodied in a single act. This Court said:

> "The law of Kentucky in its present form is the result of the construction of several statutes somewhat far apart in time and of seemingly contradictory import. * * * We follow the Kentucky Court of Appeals in taking what they derive from the legislation of the state as if it were embodied in a single act."

In 54 Am. Jur., United States Courts, Sec. 246, p. 886, it is stated that "The United States Supreme Court is without jurisdiction on certiorari to review holdings of a state court which concern matters of state law and amount at most to alleged erroneous construction of statutes of a state by its own courts." See also, *Neblett* v. *Carpenter,* 305 U. S. 297, 83 L. Ed. 182, 59 S. Ct. 170, rehearing denied in 305 U. S. 675, 83 L. Ed. 437, 59 S. Ct. 335.

(B) THE BOARD'S FINDINGS AND ORDER OF REVOCATION WERE LEGALLY SUFFICIENT.

The statute under which the Board proceeding was instituted and conducted did not require that the Board set out any findings. However, the Board made a finding, as set out in its findings and order of revocation, dated December 13, 1951, that Bandeen "has, while a

licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of Section 311.110(4), Kentucky Revised Statutes." Thus, the Board expressly found that Bandeen had engaged in conduct denounced by KRS 311.110(4), 1948 edition.

For the convenience of the Court, the Board's findings and order of revocation referred to above is set out below, with italics being employed for emphasis in certain respects.

"COMMONWEALTH OF KENTUCKY
STATE BOARD OF HEALTH

"In the Matter of:

Stanley G. Bandeen,
Respondent

* * * * *

FINDINGS AND ORDER
OF
STATE BOARD OF HEALTH

* * * * *

"This case coming on for decision at a meeting of the State Board of Health held on December 13, 1951, and the undersigned, who constitute a majority of the members of said Board, having considered the record, evidence and briefs herein, the aforesaid State Board of Health, after deliberation in closed session, *finds that the Respondent, Stanley G. Bandeen, a licentiate of said Board,*

has, while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did deceive and defraud the public and certain patients and persons within the meaning of Section 311.110(4) Kentucky Revised Statutes.

"WHEREFORE, the State Board of Health, acting pursuant to the authority conferred upon it by Sections 311.110 and 311.120 Kentucky Revised Statutes, and upon motion made by Dr. Carl J. Johnson, seconded by Dr. George S. Coon, which was unanimously adopted by the undersigned, hereby *absolutely revokes* any and all licenses heretofore issued by said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky; this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120(3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended *pending decision by said Governor upon said appeal.*

"The Secretary of the State Board of Health is directed to make this finding and order a part of the minutes of said Board, and to cause copies hereto to be forwarded to the Respondent and made a part of the record of this proceeding.

(*Doctor Bruce Underwood, Secretary of the State Board of Health, did not participate in the above described deliberation or decision.)

STATE BOARD OF HEALTH

By (s) E. M. Howard
President and member.
(s) J. Watts Stovall
Vice President and member
(s) Geo. S. Coon
Member
(s) W. H. Fuller
Member
(s) F. M. Travis
Member
(s) R. W. Robertson
Member
(s) Carl J. Johnson
Member
(s) Clarence B. Davis
Member"

It is worth noting that the motion to absolutely revoke Bandeen's license was made by Dr. Carl J. Johnson, the *osteopathic* member of the Board.

It is also worthy of note that although Dr. Underwood did not participate in the Board's deliberation or decision that took place on December 13, 1951, Dr. Underwood was not disqualified. However, in view of the bitter remarks directed to him by Bandeen's counsel from time to time, Dr. Underwood refrained from participating in said deliberation and decision as evi-

dence that he bore no malice toward Bandeen or his counsel.

In *McKay Radio and Telegraph Company* v. *Federal Communications Commission,* 97 F. 2d 641, it was held that a finding that the public interest, convenience or necessity would not be served by issuance of a radio license, was sufficient to support an order of the Federal Communications Commission denying the license. The Court said:

> "The Commission states that it reached its conclusions upon careful consideration of all the evidence and in light of the entire record * * *.
>
> "The Commission was under no obligation to recite every item of evidence, or of fact, which had some bearing on the question before it * * *.
>
> "There is no requirement that the Commission specify the weight given to any item of evidence or fact, or disclose mental operation by which its conclusions are reached."

It is true, as pointed out in the Petition, that the Court of Appeals opinion in the case at bar holds that due process of law does not require administrative agencies to make findings of fact. Whether or not this is a correct statement of the law is of no importance in the case at bar because the Board did very definitely make a finding of fact. Davis on Administrative Law, pp. 524, 526, points out that findings by courts or administrative agencies are not requirements of due process of law. There is, of course, nothing in the federal Constitution or in the Constitution of Kentucky which requires administrative agencies to make

specific findings of fact. The lower courts of Kentucky, including the circuit courts, are not required to make findings of fact. Surely an administrative body acting in a *quasi*-judicial capacity should not be required to go further than are courts of law in this respect.

CONCLUSION.

The Petition for Writ of Certiorari should be denied because:

(1) The case was decided by the Court of Appeals of Kentucky on a state jurisdictional question adequate to sustain the decision independent of any federal question involved.

(2) The decision of the Court of Appeals of Kentucky regarding the construction and application of Kentucky Statutes is binding upon this Court.

(3) Bandeen was given a fair and impartial trial.

(4) The "Complaint" and "Findings and Order" of the Board were legally sufficient.

Respectfully submitted,

WILLIAM A. LAMKIN, JR.,
JOHN P. GODFREY, JR.,
620 South Third Street,
Louisville 2, Kentucky,
Counsel for Respondents.

Dated: July 1, 1957.

APPENDIX A-1.

Commonwealth of Kentucky
STATE BOARD OF HEALTH

In the Matter of:

STANLEY G. BANDEEN,
Respondent.

* * * * *

FINDINGS AND ORDER
OF
STATE BOARD OF HEALTH

* * * * *

This case coming on for decision at a meeting of the State Board of Health held on December 13, 1951, and the undersigned, who constitute a majority of the members of said Board, having considered the record, evidence and briefs herein, the aforesaid State Board of Health, after deliberation in closed session, *finds that the Respondent, Stanley G. Bandeen, a licentiate of said Board, has, while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did deceive and defraud the public and certain patients and persons, within the meaning of section 311.110(4) Kentucky Revised Statutes.*

WHEREFORE, the State Board of Health, acting pursuant to the authority conferred upon it by Sections 311.110 and 311.120 Kentucky Revised Statutes, and upon motion made by Dr. Carl J. Johnson, seconded by Dr. George S. Coon, which was unanimously adopted by the undersigned, *hereby absolutely revokes* any and all licenses heretofore issued by said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs and/or to

practice any healing art whatsoever, within the Commonwealth of Kentucky; this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120(3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended pending *decision by said Governor upon said appeal.*

The Secretary of the State Board of Health is directed to make this finding and order a part of the minutes of said Board, and to cause copies hereof to be forwarded to the Respondent and made a part of the record of this proceeding.

(*Doctor Bruce Underwood, Secretary of the State Board of Health, did not participate in the above described deliberation or decision.)

STATE BOARD OF HEALTH

By (s) E. M. Howard
President and member

(s) J. Watts Stovall
Vice President and member

(s) Geo. S. Coon
Member

(s) W. H. Fuller
Member

(s) F. M. Travis
Member

(s) R. W. Robertson
Member

(s) Carl J. Johnson
Member

(s) Clarence B. Davis
Member

APPENDIX A-2.

REPORT OF THE GOVERNOR'S COMMISSIONER.

January 14, 1953

Honorable Lawrence W. Wetherby,
Governor, Commonwealth of Kentucky,
Frankfort, Kentucky.

Re: *Appeal of Dr. Stanley G. Bandeen from order of State Board of Health revoking his license to practice osteopathy in Kentucky.*

Dear Governor:

The above proceeding involves an appeal under Section 311.120(3) of Kentucky Revised Statutes by Dr. Stanley G. Bandeen, a licensed osteopath, from an order of the State Board of Health, dated December 13, 1951, revoking his license to practice osteopathy in Kentucky.

There have been hearings before me on two occasions in which the attorneys for the parties appeared, and the case argued and the various questions involved discussed and considered at length.

I am of the opinion that the records in this case contains evidence which supports the order and finding of the State Board of Health, and that such order, under the prevailing rule of law, should therefore be affirmed.

Accordingly, it is my view that the order of the State Board of Health revoking the license of Dr. Stanley G. Bandeen to practice osteopathy in Kentucky under the record should be affirmed.

Yours respectfully

(s) Marion Rider

APPENDIX A-3.

DECISION OF THE GOVERNOR OF THE COMMONWEALTH OF KENTUCKY.

DECISION.

In Re: Appeal of Dr. Stanley G. Bandeen from Order of State Board of Health revoking any and all licenses heretofore issued by the said Board to practice osteopathy, to administer drugs and/or to practice any healing art whatsoever.

The findings and the decision of the State Board of Health in the case of Dr. Stanley G. Bandeen and the recommendation of my Commissioner, Mr. Marion Rider, Frankfort, Kentucky, are hereby sustained.

(s) Lawrence W. Wetherby
Governor

Attest:

(s) Charles K. O'Connell
Secretary of State

March 11, 1953.

APPENDIX A-4.

FRANKLIN CIRCUIT COURT
January 20, 1954
No. 45819

Stanley G. Bandeen, - - - - - Plaintiff,

v.

E. M. Howard, et al.,
State Board of Health of Kentucky, et al., - Defendants.

OPINION.

The restraining order is set aside and plaintiff's motion to strike and his general demurrer to Defendants' answer is overruled.

The appeal from the Governor's Order should be and is dismissed.

(s) W. B. Ardery,
Judge, Franklin Circuit Court.

APPENDIX A-5.

FRANKLIN CIRCUIT COURT
No. 45819.

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al.,
State Board of Health, et al., - - - Defendants.

JUDGMENT.

This action having been substituted for trial and judgment, pursuant to an agreed order entered herein on or about May 7, 1953.

And the Court having considered the pleadings and exhibits thereto, and the transcripts of record and evidence of proceedings before the State Board of Health, and the plaintiff's motion to strike and general demurrer to Defendants' Answer, and all other matters that were filed herein.

And the Court having also considered the briefs filed on behalf of the parties hereto by counsel for the plaintiff and by counsel for the defendants.

Now, therefore, the Court, being sufficiently advised, orders and adjudges as follows:

(1) That the Plaintiff's motions to strike and general demurrer to the defendants' answer, be and they are hereby overruled:

(2) That the temporary restraining order heretofore issued herein by the Clerk of this Court, be and the same is hereby dissolved, vacated and set aside;

(3) That the plaintiff's petition herein be and the same is hereby finally dismissed and that the plaintiff receive nothing thereby;

(4) That the defendant have and recover of the plaintiff, Stanley G. Bandeen, all costs herein, for which execution may issue.

Exceptions are reserved to the plaintiff to all the foregoing.

W. B. Ardery,
Judge.

APPENDIX A-6.

COURT OF APPEALS OF KENTUCKY
October 5, 1956

Stanley G. Bandeen, - - - - - - Appellant,

v.

E. M. Howard, et al., - - - - - - Appellees.

Appeal from Franklin Circuit Court,
Honorable W. B. Ardery, Judge.

OPINION OF THE COURT BY JUDGE STEWART—AFFIRMING.

Stanley G. Bandeen filed this suit in the Franklin Circuit Court seeking to enjoin the State Board of Health of Kentucky (herein referred to as "the Board") from enforcing its order revoking his license to practice osteopathy in Kentucky. The circuit court denied the injunction and Bandeen appeals, urging these grounds for reversal: (1) The Board had no jurisdiction of the case; (2) there was no evidence to support the Board's order; (3) its order was void because it made no findings of facts; (4) Bandeen was denied a fair and impartial trial; and (5) the proceeding became a nullity when the statute under which the Board was proceeding was repealed.

Bandeen was admitted to the practice of osteopathy in Missouri in 1922 and in 1926, through reciprocity, was licensed to pursue the same profession in Kentucky. At the hearing before the Board, he admitted that he did not hold

the degree of Doctor of Medicine; that he had no right to use the professional title of "Doctor of Medicine" or its abbreviation, "M. D."; and that he was not entitled to engage in the general practice of medicine or surgery.

On April 18, 1950, Bandeen received a letter from the secretary of the Board notifying him to "show cause" within thirty days why his license should not be revoked because of "grossly unprofessional or dishonest conduct of a character likely to deceive or defraud the public in the treatment of cancer and tuberculosis." This proceeding was pitched under KRS 311.110(4), then in force. Bandeen appeared and filed special and general demurrers on the grounds that no complaint had been entered against him and that he had not been furnished with a copy of any complaint that might have been filed against him pursuant to KRS 311.120(1), which was in effect at the time. Thereupon this meeting of the Board was adjourned and thereafter the secretary of the Board, by a communication dated August 4, 1950, notified Bandeen of a hearing to be held before the Board on September 7, 1950, and attached a copy of a complaint setting out certain specific charges. These charges were, briefly stated, using medicines of doubtful value, imposing excessive charges, making unjustified promises of cure and deceiving patients about their physical condition, following unorthodox diagnostic procedures, employing scare tactics, and failing to provide for adequate relief of pain. A list of six patients and their dates of treatment, with reference to whom the charges were made, was appended. This complaint was demurred to on the ground that the notice did not give sufficient information as to the time and place of the treatments and as to the parties involved. The demurrer was overruled.

Bandeen's challenge to the jurisdiction of the Board is bottomed upon the contention that it initiated the instant proceeding against him in its name, whereas it is main-

tained the correct mode of preferring charges against him was by the verified complaint of some individual. This position is untenable. There was nothing in the applicable statutes in effect in 1950 which prohibited the Board from instituting a revocation proceeding upon the basis of information received by it or by any member thereof. It is well established that in the absence of express statutory restraints an administrative agency may inaugurate investigations and hearings of the character under discussion on its own motion. This is one of the distinctive functions of such agencies which sets them apart from the courts. See 42 Am Jur., Public Administrative Law, Sec. 31, p. 323; Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 84 L. Ed. 656, 662.

The second ground alleged as error is that the evidence does not sustain the Board's order of revocation. This assertion requires an examination of the evidence. However, before we give a summary of the proof, attention should be called to the fact that an exhibit in the record shows Bandeen was listed in the classified ad section of the Louisville telephone directory as a "Doctor of Medicine". The secretary of the Board stated that demands had been repeatedly made upon Bandeen, beginning as far back as 1944, to discontinue this type of listing, but such demands were not acceded to until shortly before the hearing of his case by the Board. Bandeen frankly admitted at the hearing he had no right to advertise as a "Doctor of Medicine". We believe his action in holding himself out in the manner we have indicated, knowing full well he was practicing a deception upon the public in respect to his professional status, constituted an unethical act tantamount to fraud. See 41 Am. Jur., Physicians and Surgeons, Sec. 51, p. 178.

The label of "miracle doctor" had become attached to Bandeen in the community where he practiced. He denied he ever referred to himself in such fashion, but he freely

conceded he was recognized for his outstanding curative powers and indicated this reputation was justified because of the "marvelous recoveries" he had effected by the type of treatment he employed. He administered the so-called "Koch shots" to patients he diagnosed to have cancer. His charges for these shots ranged from $100 to $150. He testified he procured the substance he injected into his patients from an organization or cult known as the Christian Medical Research League of Detroit, Michigan, at a cost of $25 per shot. When one of the Board members inquired whether his charges for the shots were not out of proportion to their cost, he claimed every treatment also included an examination of the "eyes, ears, nose, throat, heart, lungs, rectum, nerves, teeth, tonsils, etc." He declared he was aware the "Koch shots" had been fully investigated by the American Medical Association and had not been recommended by it. He also stated he was virtually the only practitioner in Kentucky who subscribed to this method of treatment.

One of Bandeen's patients, Mary Frances Rucker, was pronounced by him to have a cancerous tumor and, according to her husband, Everett Rucker, she grew worse and Bandeen said he could cure her and gave her three "Koch shots", charging $100 for each. When Bandeen went to see her he made a remark in the presence of both Rucker and his wife that a rubber sheet should be placed under the latter because "she's going to burst wide open and die right now." Rucker stated his wife was in great pain and Bandeen did nothing to relieve her. He also testified Bandeen's statement so frightened his wife that she "went crazy as a bedbug" and had to be later confined in the Central State Hospital as a lunatic where she remained about two months. She died some sixteen months later.

Lue Limp testified Bandeen performed hemorrhoid surgery upon her, charging her $150 for the operation. He

told her "cancer would be her trouble later", and offered to give her a cancer shot for an additional $150. She said this diagnosis induced her to submit to an injection. Subsequently she went to Doctor Henry Asman who operated on her for hemorrhoids and advised her she did not have cancer.

John Fred Herms, who had been twice operated upon for a cancerous condition in the throat and had been informed he did not have long to live, went to Bandeen for treatment when he heard he was a "miracle doctor". Bandeen said he considered Herm's case hopeless. Nevertheless, he administered a shot to Herms. The latter's mother testified that while he was suffering excruciating pains Bandeen gave him some tablets which he enjoined him not to take unless he had "dying pains". Herms died five days later.

Bandeen took the stand and testified in his own behalf and introduced only one witness, his office nurse. The tenor of his testimony, as a whole, was to justify his curative methods.

On December 13, 1951, upon the basis of the evidence recited, the Board found that Bandeen "while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of KRS 311.110(4)."

The general rule is that, in the absence of statutory directions (and there is no direction in our law), the findings of fact of an administrative board, such as the State Board of Health, are conclusive upon a reviewing court, if such are supported by substantial evidence, and even if such are based upon conflicting evidence. See 42 Am. Jur., Public Administrative Law, Sec. 211, p. 626. Such findings of fact should not be disturbed where the board had juris-

diction of the case and acted honestly and impartially, and not arbitrarily. See 70 C. J. S., Physicians and Surgeons, p. 904. See also Board of Health of Covington v. Koilman, 156 Ky. 351, 160 S. W. 1052.

Uncontroverted testimony was developed to the effect that Bandeen had paid for a listing in the Louisville telephone directory as a "Doctor of Medicine", although he did not have this professional status, and had in 1944, and several times thereafter, been warned by the Board to have the listing removed, which warning he ignored until this proceeding was begun. He also gave the so-called "Koch shots" for cancer treatment, with knowledge that after investigation the American Medical Association had branded the use of such a substance valueless therapeutically. It was brought out that Bandeen charged $100 to $150 for each "Koch shot" while the cost of each shot was only $25. He gave conflicting testimony as to what the services for each charge involved. It was stated Bandeen refused to relieve pain on two occasions and employed methods that terrorized on another. All this was denied by him. There was proof that Bandeen claimed in several instances that "Koch shots" would cure cancer. He refuted this testimony in part.

Considering the evidence which was not controverted and that which the Board could have believed, it could only with difficulty be held that its order was not supported by any substantial evidence. Nor can it be said its decision was not an honest and impartial one. In Forman v. State Board of Health, 157 Ky. 123, 162 S. W. 796, this language appears: "Whether the physician's acts were sincere or fraudulent and done for the purpose of defrauding the public is a question to be decided by the Board on all the facts."

The testimony introduced before the Board concerned patients diagnosed and treated by Bandeen as cancer cases. It is common knowledge that medical science has as yet

discovered no drug that will cure this disease in its malignant state. Despite this fact, it will be recalled Bandeen gave assurance, according to the testimony of Everett Rucker, that he could heal the latter's wife who was suffering from cancer in an aggravated form. He gave her three "Koch shots" at a cost of $100 per shot. Her illness was so advanced it should have been apparent to Bandeen that he could do nothing to save her life. It has been held that the acceptance of money upon the promise or representation of being able to cure a disease regarded by the consensus of medical opinion as incurable constitutes such unprofessional and dishonorable conduct as would warrant a license revocation. See Freeman v. State Medical Examiners, 54 Oklahoma 531, 154 Pac. 56.

It is next argued the order was a nullity because it did not set out any findings of fact. The statute under which the proceeding was instituted and conducted did not require that such be done. Written special findings by administrative agencies are not necessary in order to meet due process of law requisites. See Davis on Administrative Law (1951 Ed.), pp. 524 and 526. It has been held that a revocation of license for "unprofessional conduct" was valid, although it was not supported by a written particularization of evidentiary facts, since the record itself supplied these matters. See Duvall v. Board of Medical Examiners of Arizona, 19 Ariz. 329, 66 Pac. 2d 1026. In Barren v. Board of Dental Examiners of the State of California, 44 Cal. App. 2d 790, 113 P. 2d 247, a finding that one of its licensees was "guilty as charged in the accusation" was sufficient to support an order of license revocation; and in State ex rel. Ball v. State Board of Health, 325 Mo. 111, 26 S. W. 2d 773, an order to revoke a license was adjudged adequate, even though the record did not recite that the licensee stood convicted of the offense charged.

Bandeen's insistence that he was not accorded a fair and impartial trial is based upon a two fold argument: (a) That the secretary of the Board was antagonistic toward him at the hearing which prevented his receiving neutral treatment and that this officer was allowed to read a report he had compiled concerning Bandeen's alleged professional misconduct; and (b) that in September, 1951, over a year after the hearing, counsel for the Board filed with it a copy of an opinion and an order of the Federal Trade Commission in the Matter of Koch Laboratories, Inc., etc., as respondents. Briefly stated, this opinion held that the so-called "K[illegible] shots" in their various compounds have no therapeutic value in cancer or tuberculosis treatment, nor any beneficial effects as healing drugs, and, furthermore, that they have adverse effects on some persons when employed as a curative agent; and the order directed the respondents to cease disseminating these preparations by any means in commerce. The Federal Trade Commission opinion was later affirmed by the United States Court of Appeals for the Sixth District. See Koch, et al. v. Federal Trade Commission, 206 F. 2d 311. Bandeen asserts he was not given an opportunity to produce counter evidence on the report and on the opinion.

It is true the secretary of the Board did much of the questioning of Bandeen, but this was not improper under the circumstances. Also, during the hearing, the secretary was permitted to give general information surrounding the complaint against Bandeen over the years. Bandeen argues this was prejudicial and denied him a fair hearing. It is patent the secretary's statements were pure hearsay and not competent for any purpose. However, Bandeen was given ample opportunity to introduce rebuttal evidence. Proceedings before administrative boards are informal and a wide latitude is allowed in taking proof and the technical rules of procedure are not ordinarily enforced. See Good-

rich v. Selligman, 298 Ky. 863, 183 S. W. 2d 625. The secretary abstained from voting to revoke Bandeen's license. Furthermore, there was ample evidence other than that contained in the report of the secretary to sustain the Board's order. As to Bandeen's theory that he was dealt a wrong because the Board relied upon the Federal Trade Commission opinion in arriving at the conclusion it reached, our answer to that is the opinion was a finding of law, and not one of fact, hence the Board could take judicial notice of it. Especially is this true since the Federal Trade Commission opinion was later affirmed by the Sixth United States Circuit Court of Appeals.

KRS 311.120(3), before its repeal, provided that a licensee whose license had been revoked by the Board "may appeal to the Governor who may affirm or overule the decision of the Board." Bandeen appealed to the Governor after the Board entered its order on December 13, 1951. While the matter was pending before the Governor, the General Assembly at its 1952 session passed a comprehensive Act relative to physicians, osteopaths and chiropodists, now KRS Chapter 311, which became effective June 19, 1952, and which repealed KRS 311.110 (1948 Ed.). By KRS 311.595(1) (1953 Ed.), the Board retained its authority to revoke licenses on an expanded number of grounds, and these included the four listed under the repealed statute. The new enactment deleted the right of an appeal to the Governor, set forth in KRS 311.120(3), a part of the old Act. However, the Governor nevertheless reviewed the proceeding before the Board and upheld it.

Bandeen earnestly insists that the Board's order was voided while his appeal was pending before the Governor, since KRS 311.120(3) (1948 Ed.) was repealed without a saving clause. We do not agree. The simultaneous repeal and the reenactment of substantially the same statute, or of portions of it, do not at common law work a repeal of

the former act, but the substituted statute is construed as a continuation of the original provisions. Jones v. Kentucky State Board of Dental Examiners, 291 Ky. 136, 163 S. W. 2d 297. The jurisdiction of the Board was not disturbed, and the appellate jurisdiction was simply transferred from the Governor to the Jefferson Circuit Court. Since the new legislation did not impair the previously existing right, nor deny a remedy for its enforcement, but only modified the proceedings while providing a similar remedy, the jurisdiction continues under the forms directed by the repealing act, in so far as the two acts differ. Kingan & Co. v. Ossam, 75 Ind. 548, 121 N. E. 289.

It would seem that, upon repeal of the section conferring jurisdiction upon the Governor to pass upon an appeal of this kind, Bandeen should have appealed to the Jefferson Circuit Court, the only body with jurisdiction to hear the appeal under the existing law, and that, failing to follow this designated procedural step, he should be denied injunctive relief for this reason also.

Wherefore, the judgment is affirmed.

Attorney for Appellant:
BLAKEY HELM,
510 Marion E. Taylor Building,
Louisville, Kentucky.

Attorneys for Appellees:
MARTIN R. GLENN,
Marion E. Taylor Building,
Louisville, Kentucky,
JOHN P. GODFREY, JR.,
620 South 3rd Street,
Louisville, Kentucky,
WYATT, GRAFTON & GRAFTON,
300 Marion E. Taylor Building,
Louisville, Kentucky.

APPENDIX A-7.

NOTE: This decision was affirmed by the 6th U. S. Court of Appeals, July 8, 1953. See Koch, *et al.* v. Federal Trade Commission, 206 F. 2d 311.

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL TRADE COMMISSION

Commissioners:

James M. Mead, Chairman
William A. Ayres
Lowell B. Mason
John Carson
Stephen J. Spingarn

September 4, 1951

In the Matter of

Koch Laboratories, Inc., a corporation,
William F. Koch, individually and as an officer of Koch Laboratories, Inc., and
Louis G. Koch, individually and as an officer of Koch Laboratories, Inc.

Docket No. 4772

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respond-

ents' joint answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony and other evidence, the trial examiner's recommended decision and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH ONE: At the time this proceeding was instituted, the respondent Koch Laboratories, Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, and maintained its principal office and place of business at 8181 East Jefferson Avenue, Detroit, Michigan. Respondents William F. Koch and Louis G. Koch are individuals who have acted respectively as president and treasurer of respondent Koch Laboratories, Inc. Respondents William F. Koch and Louis G. Koch have been actively engaged in the conduct of the business of respondent Koch Laboratories, Inc., and have directed and controlled the sales and advertising policies of such corporate respondent.

PARAGRAPH TWO: Respondents for many years prior to the time when this proceeding was instituted engaged in the business of selling and distributing certain preparations designated as "Glyoxylide," "B-Q" and "Malonide Ketene

Solution," which preparations have been offered for sale and sold by respondents as treatments for various diseases and conditions of the human body and in animals. The respondents have manufactured said preparations and caused them to be transported from Detroit, Michigan, to purchasers thereof located in various States of the United States other than the State of Michigan and in the District of Columbia, and during the period aforesaid have maintained a course of trade in said preparations in commerce among and between the various States of the United States.

PARAGRAPH THREE: In the course and conduct of their business the respondents have disseminated, and have caused the dissemination of, advertisements concerning said preparations by the United States mails and various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated, and have caused the dissemination of, advertisements concerning such preparations by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PARAGRAPH FOUR: Among and typical of the statements and representations contained in advertisements in periodicals, pamphlets, circulars and other promotional matter disseminated as aforesaid and caused to be disseminated or mailed by respondents subsequent to March 21, 1938, to doctors of medicine, including homeopathic physicians and other practitioners of the healing arts, including naturopaths, in furtherance of the sale and distribution of their preparations, are the following statements and representations:

> "THE BASIS OF IMMUNITY is, after all, the vital principle, the OXIDATION MECHANISM. When its catalysis ceases, death is the result. When its activity

wanes, the toxins that support pathogenic germ activity, that produce allergy, or that cause cancer, are not destroyed in the body, and can execute their effects. All of these toxins depend upon their free valencies between carbon atoms, between carbon and oxygen, and between carbon and nitrogen for their pathogenic photochemic action.

"OUR SYNTHETIC ANTITOXINS not only activate oxygen, but they activate the toxic free valencies of germ and allergy poisons to accept the activated oxygen and thus become burned to harmless structures. Therefore, our active principles are fundamentally and universally useful."

"* * * Certain polymerization phases have specific pathogenic action, while others have no action at all. The rapidity of the recover from Virus caused disease after one dose of our Benzoquinone solution or one of the transition forms, Glyoxylide or Malonide, can only be accounted for by this assumption, for recovery from early acute infantile paralysis has taken place in twenty-four hours and measles recovers regularly in twelve hours."

"SYNTHETIC ANTITOXINS

For the Infections—

* * *

1:4 Benzoquinone,

* * *

For the ALLERGIES—

Malonide * * *

Ketone * * *

For CANCER, and the DEGENERATIVE diseases—

Glyoxylide, O=C=C=O

* * * * * *"

"GLYOXYLIDE

* * *

for

ALLERGY
CANCER
INFECTION

* * *"

"B-Q

* * *

"FOR THE INFECTIONS AND THEIR SEQUELAE."

*. "In both coronary occlusion and obliterative endarteritis besides the allergy to such toxins as that in tobacco which excite the angiospasms and the hypertrophic response in the cells of the intima, the pain of the vascular spasms and muscle spasms occurring with occlusion and circulatory failure are due to the presence of incompletely burned materials produced by muscle contraction in the absence of a supply of oxygen and glucose. In such areas the oxidation catalyst must also be exhausted, and a fresh supply behaves specifically in reducing the pain and correcting the pathology. The spasms and hyperplasia of the original allergic response are quickly correctly and sufficient circulation is soon restored to the part to burn up the pain producing products of muscle spasm through the catalysis of the glyoxylide. The toxic substances and their effects are thus removed and with reasonable time the whole pathology is corrected."

* * *

"ANGIONEUROTIC OEDEMA * * *. Condition seemed almost fatal for a half-hour before glyoxylide was given intramuscularly. In less than two minutes relief was perhaps 80 per cent. Recovery complete within one hour."

"OBLITERATIVE ENDARTERITIS * * *. Obliterative endarteritis, both legs and feet to the knees. Much pain, bedfast. Amputation at knees requested by surgeon. Blood sugar 380. One dose glyoxylide followed in three months by much improvement and in six months

by complete recovery. Blood sugar 80. No return of trouble. * * *"

"* * * Hay fever, asthma, severe sinusitis, generalized, pigmented, itching hives constantly. * * * One dose of glyoxylide was given in May, 1934. Recovery complete in all respects within six months."

"DEMENTIA PRAECOX * * *. Recovery was complete in two years after two injections of glyoxylide solution. * * *"

"EPILEPSY * * *. One dose of glyoxylide solution given August 12, 1929 was followed by a gradual recession of the disease, so that by the twelfth week only a few petit mal were observed and thereafter recovery became complete, with no more fits. * * *"

"PSORIASIS * * *. At the time of glyoxylide injection body was generally covered, hair and nails affected. Ears almost separated from scalp. Recovery completed and heart action returned to normal fourteen weeks after one injection of glyoxylide * * *."

"* * * POLIOMYELITIS * * *. Recovery started to show within ten minutes after the first injection (Glyoxylide) * * *."

"According to reports by expert clinicians more is accomplished in *tuberculosis* in three months by one dose of *Glyoxylide* than by five years of sanitarium care. Many of the most advanced cases of *tuberculosis of the lungs and bones* recover on one dose.

"The results in *leprosy, malaria, syphilis, multiple sclerosis,* and *infantile paralysis* are good, but no statistical estimates have been made as yet."

* * *

"Cases of *insanity* and *epilepsy* have responded well also. Thus the field of action is general, *and the efficiency is extraordinary.*"

* * *

ONE OR TWO DOSES are sufficient generally for complete recovery, where this is possible."

* * * They are all good."

"ARTHRITIS * * *. One dose of glyoxylide was given in December, 1927, pain was soon better and in three months she was able to walk a few steps. In one year recovery had become about ninety per cent of normal and has so remained. * * *"

"TUBERCULAR ARTHRITIS AND OSTEOMYELITIS * * *. One dose of glyoxylide given July 23, 1934 was followed by rapid decrease in the pain and a steady restoration of joint and bone to normal, functionally and structurally, with perfect use of leg and full motion within nine months. * * *"

"A case of *abscess of the prostate* with *septicemia* becoming worse after Sulfathizaole recovered splendidly following a dose of *Glyoxylide.*"

"In a series of some three hundred cases of asthma, eczema, and hay fever, over eighty-five per cent made full recoveries on one or two doses of Glyoxylide."

"WE RECOMMEND
BQ
1:4 BENZOQUINONE
IN THE TREATMENT OF ALL INFECTIONS
AND THEIR SEQUELAE INCLUDING

Gonorrhea, Salpingitis, Sinustis,
Meningitis, Infantile Paralysis,
Septicaemia, Streptococcus Sore Throat,
Pneumonia, Undulant Fever, Malaria,
Coronary Thrombosis, The Allergies,
Diabetes, Cancer, Arthritis,
Degenerative Diseases. * * *"

"MALONIDE, KETENE SOLUTION, has served well in the *Allergies, Infections* and *Cancer,* * * *.

"A boy of two with double *pneumonia* and *osteomyelitis* of the left tibia which had to be opened the full length; the prognosis given by all attendants was early death. Two doses of the Malonide Ketene solution brought full recovery with rapid recuperation. * * *

"A case of *postoperative meningitis* caused by the *Staphlococcus Pyogenes Aureus,* that had passed beyond the convulsive stage into *coma,* and was expected to pass on any minute, made a rapid recovery (ten days) on one dose of *malonide ketene* solution."

"AN EFFICIENT SINGLE DOSE TREATMENT FOR DIABETES
On a Full Carbohydrate Diet
Without Insulin

* * *

"The period of observation includes scattered cases treated since 1922 and recent systematic studies. The cases treated cover about every type known, including a few of diabetes insipidus.

"The treatment material consists of catalytic dilutions of the carriers of aerobic oxidation which we have described in the past elsewhere. (1) These substances are 1:4 Benzoquinone and its transition products Glyoxylide, (O=C=C=O), and Malonide, (O=C=C=C=O), and also Ketene. * * *

"After the remedy is injected one should watch for periodic reactions which play their part in the recovery process. These have already been described. * * * They generally come at three and a half days or three-week intervals until recovery is complete. If an interfering factor prevents recovery it should be identified and removed and the dose repeated. * * *"

"The curative fields of Glyoxylide and Benzoquinone overlap. From experience, Benzoquinone is recommended in the simple allergies, the acute infections, and diabetes; while Glyoxylide is preferred in the chronic infections and their sequelae, cancer, arthritis, and the degenerative diseases. * * *

"One dose is given, and then plenty of time allowed for the recovery process to manifest itself. Acute infections respond very quickly. For example, early acute gonorrhea generally recovers in one or two days after one dose, but the chronic conditions require a period

that is proportionate to the length of time the disease has been established in the individual and his ancestry. It may take three to six months, or even a year or two, for complete recovery. However, the dose is not repeated so long as recovery or good reactions are evident. Thus many of the so-called incurable diseases get entirely well on one dose. But the dose may be repeated if desired. * * *"

"*Acute Appendicitis,* * * *. Twenty-four hours after treatment of one dose of benzoquinone, white court was 13,500, pain nearly gone, no vomiting or nausea, desiring food, pulse 92, temperature 99°. Forty-eight hours after treatment white count 10,350, temperature normal, pulse 80, feeling good, slight sore spot still remaining in appendix region, recovery rapid thereafter."

PARAGRAPH FIVE: Through use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein which purport to be descriptive of the benefits to be derived from use of respondents' preparations, the respondents have represented directly and by implication that the preparation designated "Glyoxylide" is an adequate treatment for and possesses substantial theapeutic value in the presence of any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arterioselerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostrate gland, septicaemia, and insanity; that the product "B-Q" constitutes an adequate treatment for and possesses substantial therapeutic value in the presence of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile palaysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer arthri-

tis, and the degenerative diseases; and that the preparation "Malonide Ketene Solution" constitutes an adequate treatment for and possesses substantial therapeutic value in the presence of the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis, and post operative meningitis. Through use of the expressions "for the infections," "for the allegries," and "for cancer, and the degenerative diseases", to describe and refer to the properties of their preparations, respondents have represented respectively that their products are of therapeutic value in the treatment of all infections, allergies, cancer and degenerative diseases.

PARAGRAPH SIX: Designated in respondents' pamphlets and literature as constituting the Koch method, respondents' products have been sold in ampules variously containing two cubic centimeters or two and one-half cubic centimeters of solution and are designed to be administered by intramuscular or by intravenous injection. The premise or theoretical basis for the efficacy attributed by respondents to their method is that natural immunity or resistance to disease is brought about by a vigorous oxidation mechanism and that such state of the mechanism destroys and renders harmless germ structures and cancer producing organisms. It is stated by respondents in the advertising that tissues deficient in catalysts promoting and accelerating oxidation lose their immunity or power to burn up the germs causing disease. The substances contained in respondents' products, according to the writings and literature used in promoting the sale thereof, are oxidation catalysts which are described as being synthetically derived and very unstable and delicate in nature.

To the product "Glyoxylide" respondents ascribe the formula O=C=C=O and in substance designate this preparation in some of the promotional matter as an aqueous solution of one part Glyoxylide to one trillion parts of

water. The product "B-Q" also referred to as "1:4 Benzoquinone," is an aqueous solution of one to one million parts of water. "1:4 Benzoquinone" is a recognized chemical entity. "Malonide Ketene Solution," sometimes referred to by respondents as "Ketene," is stated by respondents to have two components. To the component which respondents designated as "Malonide" they ascribe the chemical formula of O=C=C=C=O, which substance is said to as prepared as aqueous solution of one part malonide and one trillion parts of water. The formula O=C=C=C=O is the formula of carbon suboxide, a known product. $H_2C=C=O$, the formula of the other component, is referred to also as "Ketene." "Ketene," that is, the formula $H_2C=C=O$, is a known product.

Respondent William F. Koch affirms that he has isolated the compound O=C=C=O, designated by him as "Glyoxylide." In the opinion of other scientific witnesses, including one trained in the field of biochemistry whose testimony was introduced in this proceeding by counsel supporting the complaint, the compound O=C=C=O does not exist. A basis for this opinion is that various attempts to prepare the anhydride of glyoxylic acid, as reported in the scientific literature, have been failures. Assuming that it exists, however, it would constitute the anhydride of glyoxylic acid. If combined with water, O=C=C=O would be transformed into glyoxylic acid and the transition normally would be a rapid one. With respect to the compound "Malonide," an aqueous solution of carbon suboxide when diluted to 10 to the minus 12 power would become malonic acid probably within an hour. $H_2C=C=O$, or Ketene, combined with water rapidly will form acetic acid, which acid is known to many persons because of its presence in vinegar.

Inasmuch as it is asserted by respondents that their products are identical except with respect to the grade of

their activity, further differentiation between them is unnecessary for the purposes of this proceeding. It is apparent, however, from the statements set out hereinbefore, that respondents' products represent highly dilute solutions. With respect to the product "Glyoxylide," for example, the relationship proportionately between one part O=C=C=O and one trillion parts of water can be said to approximate mathematically that which one second bears in point of time to the total seconds which have elapsed since the year 29, 738 B.C. down to the date on which this case was orally argued before the Commission. There is testimony in the record to the effect that certain of the highly dilute solutions under consideration here cannot be distinguished from water by any tests known to chemical science.

PARAGRAPH SEVEN: The testimony of various scientific witnesses which was introduced into the record by counsel supporting the complaint is to the effect that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and allergies are not caused by a defect of the oxidation mechanism of the body, and that although a decline in metabolic processes may cause more susceptibility to some types of infection, other forms of pathogenic germ activity are not dependent on the state of the oxidation mechanism. Moreover, the administration of substances such as thyroid and nitrophenols, which are known to increase oxidation in the body, are not effective treatments for infections, allergic diseases, or degenerative diseases, and in many cases they tend to make the disease worse or adversely affect the patient. In the opinion of certain of the witnesses, no valid scientific basis exists for ascribing to respondents' products any beneficial role whatsoever in connection with carbohydrate or glucose oxidation.

The witnesses testifying in support of the complaint have had wide experience in various fields of medical science, including biochemistry, internal medicine, pediatrics and communicable diseases, pathology, diseases of the metabolism, and degenerative diseases, and they affirm, in substance, that respondents' products, irrespective of the dilution in which they may be used, are of no value in the treatment of any disease or disorder whatsoever. Although these witnesses have not prescribed respondents' products or observed their effects in concrete cases, their broad knowledge, individually and in the aggregate, respecting the fields under inquiry is such that their testimony should be accorded very great weight.

Considered also is the evidence introduced into the record pertaining to several series of scientific experiments entailing the administration in various dilutions of diperoxide of diformaldehyde. The subjects were mice having tumors of spontaneous origin or in which various types of growths had been induced. The experimental procedures also utilized other groups of mice, for purposes of control, which received no injections of the peroxide. The conclusion of the scientific witness who conducted these experiments at an eastern university is that the product there under study had no effect inhibitory or stimulatory, on such growths. The experiments with diperoxide of diformaldehyde are relevant to a consideration of the products here involved inasmuch as this peroxide is allied to the product designated "Glyoxylide" and appears to have been used earlier by respondent William F. Koch in the treatment of cancer.

The record here further reveals that a commission appointed pursuant to legislation enacted by the Legislative Assembly of the Province of Ontario, Canada, to inquire into treatments offered for cancer, in rendering official report under date of February 7, 1942, to the Minister of

Health, stated that, in nine cases of cancer "treated by Glyoxylide" and observed until final termination, no curative or remedial effects were observed from the standpoint either of prolongation of life, regression of tumor or suppression of symptoms.

PARAGRAPH EIGHT: In opposition to the allegations of complaint, respondents have introduced testimony and other evidence relating to specific instances in which their products have been administered to human patients or to animals and other testimony respecting the opinions which certain of the witnesses who are doctors of medicine or practitioners of other healing arts have formed as to respondents' products. These opinions, formed primarily on the basis of their use of such preparations, are to the general effect that respondents' products have significant therapeutic value. It is urged by respondents that this testimony including that pertaining to instances of actual use demonstrates that their products have substantial therapeutic value.

It is the view of the Commission that the evidence relating to the case histories of these selected cases is unconvincing and that it constitutes a wholly inadequate basis for a conclusion that respondents' products possess therapeutic value. For instance, very grave doubts are warranted as to the correctness of the diagnoses made in various instances and this is particularly true in certain of the cases where, in the absence of corroborative biopsy, the patient was deemed to have cancer or to have had a recurrence of cancer. The improvement in condition apparently manifested in some instances following administration of one of respondents' products undoubtedly was attributable to such conventional therapeutic treatment as was rendered to the patient previously, simultaneously or subsequently rather than to the effects of the administration of respondents' products. In other instances, the particular disease being treated belongs in that category of disorders the

symptoms of which may be subject to complete or substantial remission causing them to disappear, perhaps to reappear months or years later, and in still others the diseases themselves are self-limiting and/or their symptoms are of definite duration.

In no single category of the diseases and ailments does the testimony relating to clinical use in specific cases embrace a substantial number of cases, and in reference to more than 20 of such categories the testimony in each instance relates to use of respondents' treatment on one patient. The evaluation of a therapeutic preparation, however, requires study of a substantial number of cases correctly diagnosed. Evaluation, moreover, usually contemplates some knowledge of the ratio of cures to trials. Considering that respondents' products have been in existence for more than two decades, there is a singular lack of test data or information obtained from controlled clinical work to corroborate the representations for therapeutic value used by respondents in promoting the sale of these products.

PARAGRAPH NINE: The preponderant weight of qualified scientific opinion is that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and the allergies are not caused by a defect of the oxidation mechanism, and that respondents' products have no beneficial role whatsoever in carbohydrate or glucose oxidation. On the basis of the greater weight of the evidence received in this proceeding, it is the conclusion of the Commission that respondents' preparations possess no therapeutic value and that their use in any dilution will not benefit any disease or condition of the human body or in animals.

PARAGRAPH TEN: The statements appearing in the advertising and promotional matter used by respondents, of which the statements contained in Paragraph Four hereof are typical and which, as found in Paragraph Five hereof,

represent directly and by implication that respondents' products have therapeutic value in the treatment of the diseases, disorders and conditions referred to, including those statements which represent directly and by implication that the efficacy of respondents' products and their method of treatment is attested, demonstrated or proved by the results afforded in the clinical use of such preparations, constitute false representations of material facts. The Commission, therefore, finds that such advertisements are false and misleading and constitute false advertisements.

Respondents contend that no public interest exists in this proceeding for the reason that dissemination of the advertising statements has been restricted to members of the medical profession having the requisite training to understand and evaluate therapeutic claims made for medicinal products. As previously stated, respondents' promotional literature has been disseminated to doctors of medicine, including homeopathic physicians, and to practitioners of other healing arts including naturopathy. It is noted, moreover, in this connection, that representations phrased in somewhat different language but similar in general import to certain of the advertising statements appearing in Paragraph Four hereinbefore, particularly as they relate to the treatment of cancer, also have appeared in media coming to the attention of the lay public. An example is certain folders furnished by respondents for distribution to patients of practitioners purchasing respondents' preparations. It is not true, therefore, that the dissemination of respondents' advertising matter has been limited to such persons as have the requisite training to accurately appraise the false representations of material facts appearing in the advertising, but, even if that situation had obtained, the provisions of, and the public policy expressed in the Federal Trade Commission Act, as amended, would require the corrective action being taken in this proceeding to eliminate the false representations found to have been made.

PARAGRAPH ELEVEN: The use by respondents of the advertising matter heretofore described has had the capacity and tendency to deceive and mislead prospective purchasers and purchasers of respondents' products into the belief that the statements and representations are true and, by reason of the erroneous and mistaken beliefs so engendered, to induce the purchase of respondents' products.

CONCLUSION

The aforesaid acts and practices as herein found have been to the prejudice of the public and constitute unfair and deceptive acts in commerce within the intent and meaning of the Federal Trade Commission Act.

It appears from certain documents which have been filed on behalf of respondents that, subsequent to the institution of this proceeding, the respondent corporation, Koch Laboratories, Inc., was dissolved and that it does not exist as a corporation. In the circumstances, therefore, respondent Koch Laboratories, Inc., is not being included as a party to the order to cease and desist which is issuing separately herein. The documents referred to contain indication also that the sale and distribution of the products here involved have been discontinued by the respondent individuals. In the opinion of the Commission, however, the public interest, in the circumstances here, requires issuance of an order prohibiting the respondent individuals from resuming or otherwise continuing the use of the unfair and deceptive acts and practices which were being used at the time and subsequent to the time when the complaint in this case was issued.

By the Commission.

(Seal)

W. A. Ayres,
Acting Chairman.

ISSUED: August 23, 1951
ATTEST: D. C. Daniel,
Secretary.

United States of America

Before the

FEDERAL TRADE COMMISSION

Commissioners:

James M. Mead, Chairman
William A. Ayres
Lowell B. Mason
John Carson
Stephen J. Spingarn

In the Matter of	
Koch Laboratories, Inc., a corporation, William F. Koch, individually and as an officer of Koch Laboratories, Inc., and Louis G. Koch, individually and as an officer of Koch Laboratories, Inc.	Docket No. 4772

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore designated by it, recommended decision of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the above-named respondents have violated the provisions of the Federal Trade Commission Act:

It Is Ordered that respondents William F. Koch and Louis G. Koch and their respective agents, representatives and employees, directly or through any corporate or other

device, in connection with the offering for sale, sale or distribution of the preparations designated "Glyoxylide," "B-Q," also referred to as "1:4 Benzoquinone," "Malonide Ketene Solution," and the components of said last-named preparation designated as "Malonide" and "Ketene," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That the preparation "Glyoxylide" is an adequate treatment for cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic, oedema, obliterative endarteritis, asthma, hay fever, demential praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis, osteomyelitis, allergy, infection, abscess of the prostate gland, septicaemia, or insanity, or that said preparation has any therapeutic value in the treatment of any of such conditions;

(b) That the preparation "B-Q" constitutes an adequate treatment for any of the infections or sequelae thereof, gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, any of the allergies, diabetes, cancer, arthritis, or any degenerative disease, or that said preparation possesses any therapeutic value in the treatment of any of such conditions;

(c) That the preparation "Malonide Ketene Solution," or either of its components "Malonide" and "Ketene," constitutes an adequate treatment for any of the allergies or infections, diabetes, cancer, double pneumonia, osteomyelitis, or post operative meningitis.

or that said preparations possess any therapeutic value in the treatment of any of such conditions:

(d) That any of said preparations possess therapeutic value or that their use will be of benefit in the treatment of any disease of the human body or in animals.

(2) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited under paragraph (1) hereof.

It Is Further Ordered that the respondents, William F. Koch and Louis G. Koch, shall, within sixty (60) days after service upon them of this order, filed with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

(Seal)

D. C. Daniel,
Secretary.

ISSUED: August 24, 1951.

APPENDIX B-1.

Kentucky Revised Statutes (1948 Ed.), Section 311.110.

"Grounds for suspension; revocation; refusal to issue license. The board may suspend, revoke or refuse to issue any license to practice medicine for any of the following causes:

(1) Presentation to the board of any license certificate or diploma illegally or fraudulently obtained, or the practice of fraud or deception in passing an examination.

(2) The commission of a criminal abortion, or conviction of a felony involving moral turpitude.

(3) Chronic or persistent inebriety or addiction to a drug habit to an extent that disqualifies from practicing with safety to the people.

(4) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public."

APPENDIX B-2.

Kentucky Revised Statutes (1948 Ed.), Section 311.120.

"Hearing on suspension, revocation; appeal to Governor from any action concerning license.

(1) In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing. He may be heard in person and by counsel. The board may take oral or written proof for and against the complaint as it considers will best present the facts.

(2) Upon suspension or revocation of a license the board shall give official notice of its action, under seal, to the county clerk of the county in which the licensee is registered, and his name shall be marked as suspended for the period indicated or stricken from the register in accordance with the notice.

(3) In all cases of suspension, revocation or refusal to issue a license, the applicant or licensee may appeal to the Governor, who may affirm or overrule the decision of the board."

APPENDIX B-3.

Kentucky Revised Statutes (1952 Act), Subsection (1) of Section 311.595.

"(1) Where such power has not been transferred by statute to some other board, commission or agency of this state, the board may place a licensee on probation for a period not to exceed two years, or may suspend a license for a period not to exceed two years, or may revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

(a) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other thing, in connection with an application for a license or permit;

(b) Practiced, or aided or abetted in the practice of, fraud, forgery, deception, collusion or conspiracy in connection with an examination for a license;

(c) Committed an unlawful abortion;

(d) Been convicted of a felony involving moral turpitude;

(e) Become addicted to a drug habit;

(f) Become a chronic or persistent alcoholic;

(g) Developed such physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public;

(h) Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(i) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any birth, death, premarital, or other certificate or document executed in connection with the practice of his profession;

(j) Employed, as a practitioner of medicine or osteopathy, in the practice of his profession in this state, any person not duly licensed; or otherwise aided, assisted or abetted the unlawful practice of medicine or osteopathy or any other healing art;

(k) Violated the code of conduct promulgated by the board under subsection (4) of KRS 311.600;

(l) Violated any order of suspension, or the terms or conditions of any order of probation, issued by the board."

APPENDIX B-4.

Kentucky Revised Statutes (1952 Act), Subsection (4) of Section 311.595.

"(4) Any licensee who is aggrieved by an order of the board placing the licensee on probation, or suspending or revoking his license may procure a declaration of rights under the Declaratory Judgment Act by filing, within thirty days after notice of said board order, a petition in equity against the board in the circuit court of Jefferson County, Kentucky, together with a bond with good and sufficient sureties thereon to cover all costs, which petition shall request judicial review of the board order and proceedings held by the board, or its hearing officer, and set out with particularity the alleged grounds relied upon for reversal or modification of the board order. Summons and a copy of the petition may be served upon the secretary for and on behalf of the board, and the secretary shall, within thirty days after such service and the filing of said bond, file with the court a transcript of the record of hearing together with a certified copy of the board order complained of. The board may file an answer, or such other pleadings as it considers appropriate, and the court shall, after considering the transcript of record and the board order and any arguments of counsel, enter judgment. No new or additional evidence shall be introduced in the circuit court. In the event the action of the board is not sustained the court shall, upon request of the board, remand the case to the board for further proceedings. Any party aggrieved by the final judgment, order or decree rendered in the case by the Jefferson Circuit court may appeal therefrom to the Court of Appeals of Kentucky in the time, method and manner provided in the Declaratory Judgment Act and the Court of Appeals shall docket and advance the appeal as provided in said Declaratory Judgment Act."

APPENDIX B-5.

Kentucky Revised Statutes (1952 Act), Section 311.555.

Legislative purpose declared.

"It is the declared policy of the General Assembly of Kentucky that the practice of medicine and osteopathy, should be regulated and controlled as provided in KRS 311.550 to 311.620 in order to prevent empiricism and to protect the health and safety of the public."

APPENDIX B-6.

Kentucky Revised Statutes (1952 Act), Section 311.615.

"Continuation of existing licenses; limitation of authority.

(1) All licenses heretofore issued by the board for the practice of medicine or osteopathy, or any limited school or system, are hereby declared to be valid and in full force and effect unless they have become expired, cancelled, suspended or revoked in accordance with law.

(2) Nothing in KRS 311.550 to 311.620 shall be construed as hereafter conferring upon the board any authority to issue, suspend or revoke any license for the practice of dentistry, optometry, chiropractic, nursing or pharmacy."

APPENDIX C-1.

SHOW CAUSE LETTER DATED APRIL 17, 1950.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF HEALTH
620 South Third Street
Louisville 2, Kentucky

April 17, 1950

Dr. Stanley Bandeen
Fincastle Building
Louisville, Kentucky

Dear Doctor Bandeen:

You are hereby notified to appear for a hearing before the State Board of Health of Kentucky at the Frankfort Country Club which is located one and one-half miles from Frankfort, Kentucky, on the Lexington Road at 10:30 A.M. on the 18th day of May, 1950, to show cause why your license to practice osteopathy in the Commonwealth of Kentucky should not be revoked because of grossly unprofessional or dishonest conduct of character likely to deceive or defraud the public in the treatment of cancer and tuberculosis.

You may appear in person or by counsel or both, as you may desire.

State Board of Health,
By (s) Bruce Underwood, M. D.
Secretary

Registered Return
Receipt Requested